



An Audit Report on

Selected Major Agreements Under the Texas Economic Development Act

October 2016

Report No. 17-009



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Overall Conclusion

Under the Texas Economic Development Act (Texas Tax Code, Chapter 313), businesses have made capital investments and created jobs through their agreements for limitations on the appraised value of property (agreements) with school districts. Oversight of those agreements relies primarily on self-reported information that businesses certify.

As of December 31, 2015, there were 282 executed agreements between 147 school districts and 193 businesses. County appraisal districts reported to the Office of the **Comptroller of Public Accounts (Comptroller's Office)** that, from tax year 2005 through tax year 2015, an estimated \$1.403 billion in property tax revenue was not collected as a result of agreements. As of December 31, 2015, businesses associated with approximately 282 executed agreements and 1 application for an agreement may be entitled to receive an estimated \$590 million in tax credits from tax year 2006 through tax year 2031.

To determine whether businesses with agreements complied with Texas Tax Code, Chapter 313, the three school districts audited—the Port Neches-Groves Independent School District, the Sabine Pass Independent School District, and the Clyde Consolidated Independent School District—relied primarily on the certification of the annual eligibility reports and biennial progress reports that businesses submitted to confirm (1) the **businesses' capital investment and (2) the number of jobs the businesses committed to create or had created.** Statute does not require school districts to verify that information, and the school districts audited did not perform verifications.

School districts provide the information that businesses submit to the **Comptroller's Office and the Texas Education Agency as the basis for additional**

Background Information on the Texas Economic Development Act (Texas Tax Code, Chapter 313)

In 2001, the 77th Legislature enacted the Texas Economic Development Act (Act). The purpose of the Act, as currently specified in Texas Tax Code, Section 313.003, is to:

- Encourage large-scale capital investments in this state;
- Create new, high-paying jobs in this state;
- Attract to this state new, large-scale businesses that are exploring opportunities to locate in other states or other countries;
- Enable local government officials and economic development professionals to compete with other states by authorizing economic development incentives that meet or exceed incentives being offered to prospective employers by other states and to provide local officials with an effective means to attract large-scale investment;
- Strengthen and improve the overall performance of the economy of this state;
- Expand and enlarge the ad valorem property tax base of this state; and
- **Enhance the state's economic development efforts by providing school districts with an effective local economic development option.**

The Act allows a school district to attract new taxable property and create jobs by offering (1) an eight-year limitation on the appraised value of a property for the maintenance and operations **portion of the school district's property tax and (2)** a tax credit for agreements effective prior to January 1, 2014. The property remains fully taxable for the purposes of any school district debt service tax. Texas Education Code, Section 42.2515, entitles school districts to additional state aid from the Texas Education Agency for tax credits that are applied against the property taxes of businesses with appraisal limitation agreements (agreements) each tax year.

As of January 2015, the Office of the Comptroller of Public Accounts reported that businesses with agreements had invested approximately \$123 billion in the state and created 5,487 qualifying jobs through May 2014.

Source: The Office of the Comptroller of Public Accounts.

This audit was conducted in accordance with Texas Government Code, Section 321.0132, and Texas Tax Code, Section 313.010.

For more information regarding this report, please contact Verma Elliott, Assistant State Auditor, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

state aid paid to the school districts for tax credits associated with applicable agreements.

Each of the three school districts audited hired the same consultant to compile information that the businesses reported and to calculate revenue protection payments and payments in lieu of taxes that are required by the agreements.

Based on the information in their annual eligibility reports and biennial progress reports, the businesses with agreements certified that they met certain elements of and complied with various requirements of Texas Tax Code, Chapter 313. The school districts audited accepted the submissions.

Auditors identified certain aspects of the overall accountability and transparency associated with the agreements under Texas Tax Code, Chapter 313, that could be **strengthened. The State Auditor's Office previously reported similar issues for** other school districts in a November 2014 report¹ and an August 2015 report²:

- Verification of information. The three school districts audited relied primarily on certifications that businesses submit and information that the **district's consultants** prepared. Statute does not require school districts to verify that information, and the school districts audited did not perform verifications.
- Developing agreements. In most instances, the agreements audited included all statutorily required provisions and were approved by the school boards.

However, while not required by statute, the agreements audited did not include certain provisions that would have increased the accountability and transparency:

- Specification of the agreed-upon investment amounts and the anticipated number of jobs to be created. (That information was in the applications for agreements.)
 - A requirement for the school districts to determine the eligibility of any new businesses to which an existing agreement would be transferred.
 - Specification of performance requirements or a requirement to submit periodic deliverables to enable the school districts to monitor compliance with the agreement.
- Issuing tax credits. Texas Tax Code, Chapter 313, requires a school district to direct its tax assessor-**collector to apply tax credits to a business's future property taxes. However, as the State Auditor's Office reported in**

¹ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

² See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015).

November 2014 and August 2015, at the direction of the Texas Education Agency, the three school districts audited paid tax credits totaling \$4,998,487 directly to businesses with which they had agreements.

- Disclosing conflicts of interest. The current conflict of interest policies of the three school districts audited included all statutory requirements in the Texas Local Government Code, Chapters 171 and 176. However, auditors identified weaknesses in those policies. Specifically, those policies did not require disclosure of potential conflict of interest on a regular, periodic basis or affirmations that no conflicts existed with the businesses and the consultants associated with the agreements.

Opportunities also exist to improve certain administrative processes at each school district audited. While the issues identified in those processes may not be material to determining compliance with Texas Tax Code, Chapter 313, they are **significant to each school district's management of agreements.**

In addition, auditors followed up on 11 recommendations addressed to the **Comptroller's Office** in *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act (State Auditor's Office Report No. 15-009, November 2014)*. Ten of the recommendations were fully implemented and one recommendation was no longer applicable because of a change in statute.

Auditors also communicated other, less significant issues separately in writing to each school district audited.

In November 2014³ and August 2015⁴, **the State Auditor's Office made certain** recommendations to the Legislature for its consideration.

³ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

⁴ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015).

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/Subchapter	Title	Issue Rating ^a
Oversight and Monitoring		
1-A	Oversight of Agreements Relies Primarily on Information That Businesses Report	High
1-B	School District Monitoring of Agreements Relies Primarily on Information That Businesses Report	High
1-C	Summary of the Agreements Audited	Not Rated
2	Processing Applications for Agreements	Low
3	Developing Agreements	Medium
4	Compliance Reporting	Medium
5	Processing Tax Credits	Medium
6	Disclosing Conflicts of Interest	Medium
7	Administrative Processes	Medium
Prior Audit Recommendations		
8	Status of Prior Audit Recommendations Addressed to the Comptroller's Office	Not Rated
<p>^a A chapter/subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter/subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.</p>		

Summary of Management's Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. Management's responses from the three school districts audited are presented in Appendix 8. The Port Neches-Groves Independent School District agreed with the recommendations addressed to it. However, the Sabine Pass Independent School District and the Clyde Consolidated Independent School District did not agree with certain findings and recommendations addressed to them.

After review and consideration of management's responses, the State Auditor's Office stands by its conclusions based on the evidence presented and compiled during this audit.

Audit Objectives and Scope

The objectives of this audit were to:

- Determine whether selected major agreements under the Texas Economic Development Act:
 - Accomplish the purposes of Texas Tax Code, Section 313.003.
 - Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
 - Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.
- Determine whether there are ways to increase the efficiency and effectiveness of the administration of the Texas Economic Development Act.

In addition, the audit included determining the implementation status of prior **State Auditor's Office** recommendations to the **Comptroller's Office** related to the administration of Chapter 313 agreements and evaluate whether management has taken corrective actions to address the recommendations as reported in *An Audit of Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

The scope of this audit covered selected applications and agreements processed from fiscal year 2003 through fiscal year 2014. The scope for determining the implementation status of prior recommendations to the **Comptroller's Office** covered applications, agreements, tax credit policies and processes, and processes regarding staff conflict of interest disclosures established after the audit recommendations were implemented, as reported by management of the **Comptroller's Office**.

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Detailed Results

Chapter 1

Oversight and Monitoring of Agreements Relies Primarily on Information That Businesses Report

The three school districts audited—the Port Neches-Groves Independent School District (Port Neches-Groves ISD), the Sabine Pass Independent School District (Sabine Pass ISD), and the Clyde Consolidated Independent School District (Clyde CISD)—executed their agreements for limitations on the appraised value of property (agreements) with businesses⁵ in compliance with Texas Tax Code, Section 313.027.

The businesses certified that they complied with certain requirements of Texas Tax Code, Chapter 313, and the school districts audited accepted those certifications. As discussed below, statute does not require school districts to verify that information, and the school districts audited did not verify the information that the businesses provided in their applications for the agreements or in their periodic reports.

Chapter 1-A

Oversight of Agreements Relies Primarily on Information That Businesses Report

Chapter 1-A
Rating:
High ⁶

Auditors identified the following areas related to the overall accountability and transparency of agreements that could be strengthened. The State Auditor's Office previously reported the same issues in November 2014⁷ and August 2015⁸:

- Oversight of agreements under Texas Tax Code, Chapter 313, is based primarily on information that businesses certify. **The three school districts audited relied**

⁵ Auditors audited agreements:

- Between Port Neches-Groves ISD and Sabina Petrochemicals, LLC, ATOFINA Petrochemicals, Inc., and BASF Corporation (hereafter referred to collectively in this report as "Sabina").
- Between Sabine Pass ISD and Golden Pass LNG, LLC and Golden Pass LNG Terminal, LLC (an affiliate of Exxon Mobile Corporation) (hereafter referred to collectively in this report as "Golden Pass LNG").
- Between Clyde CISD and Mesquite Wind, LLC and Post Oak Wind, LLC (hereafter referred to collectively in this report as "Mesquite Wind and Post Oak Wind").

⁶ Chapter 1-A is rated High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

⁷ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

⁸ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015).

primarily on the certifications of the annual eligibility reports and biennial progress reports that the businesses submitted to confirm the businesses' qualified investment and the number of jobs they committed to create or had created.

- There are no statutory requirements to verify information that businesses report and certify. **Texas Tax Code, Chapter 313, does not require that the compliance and property information that businesses with agreements report to school districts be verified for accuracy and completeness.**
- Additional state aid provided to school districts is based primarily on information that businesses report and certify. **The Office of the Comptroller of Public Accounts (Comptroller's Office) and the Texas Education Agency rely primarily on the certified information that school districts provide to support the appropriateness of additional state aid paid to school districts that have agreements, including additional state aid for tax credits issued to businesses. The three school districts audited did not determine whether the businesses complied with their agreements before the school districts (1) distributed tax credits to the businesses and (2) subsequently requested additional state aid from the Texas Education Agency.**
- The school districts audited had conflict of interest policies that complied with statute; however, auditors identified weaknesses in those policies. **The audited school districts' current policies to disclose business, professional, and personal relationships that could create potential conflicts of interest complied with Texas Local Government Code, Chapters 171 and 176. However, those policies did not require the filing of disclosure statements on a regular basis or affirmations that conflicts did not exist on an annual basis. In addition, the school districts' conflict of interest policies and disclosure forms were not specific to the agreements.**
- Agreements executed prior to January 2014 may not be subject to statutory job-creation monitoring requirements. **House Bill 3390 (83rd Legislature, Regular Session) amended Texas Tax Code, Chapter 313, to assign additional monitoring and reporting requirements to the Comptroller's Office and remove tax credit provisions (see text box for additional details). However, those requirements may not apply to agreements executed prior to January 2014.**

House Bill 3390
(83rd Legislature, Regular Session)

House Bill 3390 amended Texas Tax Code, Chapter 313, by (1) assigning to **the Comptroller's Office additional** monitoring and reporting responsibilities with regard to job-creation requirements in agreements and (2) removing Texas Tax Code, Subchapter D, which allowed businesses with agreements to receive tax credits in addition to a limitation on the appraised value of property. Those changes were limited to agreements executed on or after January 1, 2014.

In November 2014⁹ and August 2015¹⁰, the State Auditor’s Office made certain recommendations to the Legislature for its consideration.

Chapter 1-B

School District Monitoring of Agreements Relies Primarily on Information That Businesses Report

Chapter 1-B
Rating:
High ¹¹

For the school districts audited, monitoring relied primarily on information that businesses certified on annual eligibility reports and biennial progress reports that neither the school districts nor their consultants verified.

The businesses with which the audited school districts had agreements— Sabina, Golden Pass LNG, and Mesquite Wind and Post Oak Wind— submitted annual eligibility reports and biennial progress reports to the districts, as required by the Comptroller’s Office. The businesses certified that they complied with certain requirements of Texas Tax Code, Chapter 313, and the school districts audited accepted those certifications. As discussed above, statute does not require school districts to verify the information on annual eligibility reports and biennial progress reports, and the school districts did not perform verifications.

The school districts hired a consultant to assist in the administration of the agreements, including addressing reporting requirements, compiling information that the businesses reported, and performing annual calculations of revenue protection payments and payments in lieu of taxes that the agreements required.

Examples of information in the reports that the businesses and school districts submitted included:

- Market value and taxable value of property covered under the agreement. (Correctly specifying those values is significant to ensuring that the property tax revenue amount not collected is calculated accurately because that affects the amount of state funding a school district receives each tax year).

⁹ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 15-009, November 2014).

¹⁰ See *An Audit on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 15-042, August 2015).

¹¹ Chapter 1-B is rated High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

- Total and qualified investment amounts. (Businesses are required to make certain qualified investments in personal property that will be used with property under an agreement. See Appendix 7 for more information on qualifying investments).
- The number of qualifying jobs the business committed to create on the application and the number of qualifying jobs that the business actually created, as well as whether the number of jobs created complied with statutory requirements. (Businesses are required to create qualifying jobs. See Appendix 7 for more information on qualified jobs and job-creation requirements).
- The amount of revenue protection and supplemental payments (payments in lieu of taxes) the business paid to the school district. (See Appendix 7 for more information on revenue protection payments.)
- The gross tax savings through tax credit and limitation the business received as a result of the agreement.

Chapter 1-C
Summary of the Agreements Audited

Table 2 summarizes the agreements audited, including the businesses associated with the agreements, the time lines of the agreements, and the associated market values. The information is presented to provide background information on the audited agreements for the subsequent chapters of this report.

Table 2

Summary of the Agreements Audited			
Item	School Districts		
	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD
Names of businesses associated with the agreement	Sabina Petrochemicals, LLC; ATOFINA Petrochemicals, Inc.; and BASF Corporation	Golden Pass LNG, LLC and Golden Pass LNG Terminal, LLC (an Affiliate of Exxon Mobile Corporation)	Mesquite Wind, LLC and Post Oak Wind, LLC
Maximum value on which property under the agreement can be taxed for the maintenance and operation portion of property taxes (appraisal limitation)	\$30,000,000	\$30,000,000	\$5,000,000
Tax year 2015 appraised value	\$29,458,900	\$454,149,770	\$205,989,670
Tax year the appraisal limitation ends ^a	2012	2016	2015

Summary of the Agreements Audited

Item	School Districts		
	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD
Tax year the property covered under the agreement will be fully taxable for maintenance and operations tax purposes	2013	2017	2016
Tax year through which the school district is required to pay tax credits to the business	2013 ^b	2019	2016

^a See Appendix 6 for more information on the time line of agreements.

^b The agreement listed 2015 as the tax year through which Port Neches-Groves ISD was required to pay tax credits to the businesses. However, that was not in compliance with the version of Texas Tax Code, Section 313.104, in place when the agreement was completed. The businesses associated with that agreement were eligible for an additional tax credit only in the year after the appraisal limitation period expired.

Sources: The Comptroller’s Office, the Callahan County Appraisal District, the Shackelford County Appraisal District, the Jefferson County Appraisal District, Port Neches-Groves ISD, Sabine Pass ISD, and Clyde CISD.

Table 3 provides information on the appraised value and the appraisal limitation value of the properties in the audited agreements with the school districts through tax year 2015. The information is presented to provide background information on the audited agreements for the subsequent chapters of this report.

Table 3

Audited Agreements Property Appraised Values Compared to Appraisal Limitation Values January 2003 through December 2015									
Tax Year	Port Neches-Groves ISD Agreement			Sabine Pass ISD Agreement			Clyde CISD Agreement		
	Agreement Year	Appraised Value	Appraisal Limitation Value ^a	Agreement Year	Appraised Value	Appraisal Limitation Value ^a	Agreement Year	Appraised Value	Appraisal Limitation Value ^a
2003	1	\$118,588,560	No limitation	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
2004	2	\$156,501,500	No limitation	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
2005	3	\$217,073,800	\$30,000,000	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
2006	4	\$225,477,140	\$30,000,000	Not applicable	Not applicable	Not applicable	1	\$0	No limitation
2007	5	\$231,585,800	\$30,000,000	1	\$11,288,300	No limitation	2	\$100,263,180	No limitation
2008	6	\$226,382,300	\$30,000,000	2	\$154,179,800	No limitation	3	\$396,660,430	\$5,000,000
2009	7	\$159,143,800	\$30,000,000	3	\$323,588,440	\$30,000,000	4	\$384,605,410	\$5,000,000
2010	8	\$106,240,300	\$30,000,000	4	\$458,834,950	\$30,000,000	5	\$396,494,040	\$5,000,000
2011	9	\$106,460,000	\$30,000,000	5	\$623,825,990	\$30,000,000	6	\$341,352,360	\$5,000,000
2012	10	\$41,552,700	\$30,000,000	6	\$591,806,490	\$30,000,000	7	\$341,237,980	\$5,000,000
2013	11	\$30,799,700	No limitation	7	\$571,646,710	\$30,000,000	8	\$288,125,050	\$5,000,000

Audited Agreements
Property Appraised Values Compared to Appraisal Limitation Values
January 2003 through December 2015

Tax Year	Port Neches-Groves ISD Agreement			Sabine Pass ISD Agreement			Clyde CISD Agreement		
	Agreement Year	Appraised Value	Appraisal Limitation Value ^a	Agreement Year	Appraised Value	Appraisal Limitation Value ^a	Agreement Year	Appraised Value	Appraisal Limitation Value ^a
2014	12	\$29,458,900	No limitation	8	\$518,246,530	\$30,000,000	9	\$258,401,790	\$5,000,000
2015	13	\$29,458,900	No limitation	9	\$454,149,770	\$30,000,000	10	\$205,989,670	\$5,000,000

^a The appraisal limitation became effective in the third year of the agreement and applies only to the maintenance and operations portion of the school district's property tax. The property remains fully taxable for purposes of the school district's debt service tax during the term of the agreement.

Sources: The Comptroller's Office, the Jefferson County Appraisal District, the Callahan County Appraisal District, the Shackelford County Appraisal District, Port Neches-Groves ISD, Sabine Pass ISD, and Clyde CISD.

Chapter 2
Rating:Low ¹²

The three school districts audited relied primarily on information provided in **businesses' applications**.

The school districts documented their determinations of how the agreements would comply with the purpose and intent of Texas Tax Code, Chapter 313 (see Table 4 for additional information about the applications).

Table 4

Information on the Applications Associated with the Audited Agreements			
Item	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD
Names of businesses that applied for the agreement	Sabina Petrochemicals, LLC; ATOFINA Petrochemicals, Inc.; and BASF Corporation	Golden Pass LNG, LLC and Golden Pass LNG Terminal, LLC (an Affiliate of Exxon Mobile Corporation)	Mesquite Wind, LLC and Post Oak Wind, LLC
Date on which the businesses submitted the original application to the school board	August 8, 2002	April 12, 2005	August 31, 2005
Date on which the businesses submitted an amended application to the school board	September 3, 2002 ^a	August 2, 2005 ^b	December 15, 2005 ^c
Date on which the Comptroller's Office recommended that the amended application be favorably considered	November 4, 2002	August 5, 2005	November 21, 2005
Date on which the school board issued its findings related to the effect of the appraisal limitation on the school district and approved the agreement	December 10, 2002	March 31, 2006	November 23, 2005
^a The businesses amended their application to revise the number of qualifying jobs and the average wage rate for qualifying jobs. ^b The businesses amended their application to revise the tax payer I.D. number. ^c The businesses amended their application to revise the investment amount.			

Sources: The Comptroller's Office, Port Neches-Groves ISD, Sabine Pass ISD, and Clyde CISD.

To make those determinations, the school districts relied primarily on their consultant to verify the certified information that the businesses provided in their original and amended applications for agreements. Examples of that information included:

- Economic impact reports that discussed the relationship between (1) manufacturing or renewable energy industries and the types of qualifying

¹² Chapter 2 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

jobs to be created and (2) the long-term economic growth plans of the State.

- Information regarding the ability of the businesses to locate in or relocate to another state or another region of Texas.
- The qualified investments to be made during the qualifying time period and the anticipated total investments for the projects.
- The number of qualifying jobs to be created, the wages to be paid for each job, and the types of employee benefits the businesses would offer.

Texas Tax Code, Section 313.025(f), states that a school district may approve an application only if it finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value, and determines that granting the application is in the best interest of the school district and the State.

Chapter 3
Rating:

Medium¹³

The three school districts audited executed their agreements with businesses in compliance with Texas Tax Code, Section 313.027.

Sabina, Golden Pass LNG, and Mesquite Wind and Post Oak Wind certified that they complied with certain requirements of Texas Tax Code, Chapter 313, and the school districts accepted those certifications. As discussed in Chapter 1, statute does not require school districts to verify that information, and the school districts did not perform verifications of information that the businesses provided in their applications for the agreements or in periodic reports.

The school districts ensured that the agreements included all provisions that statute required and that their school boards approved the agreements. However, the agreements did not include certain provisions that would increase accountability and transparency.

The agreements did not include provisions that described the agreed-upon qualified investment amount and the number of qualifying jobs to be created.

The qualified investment amounts that the businesses committed to make and the anticipated numbers of qualifying jobs to be created were documented in the original and amended applications, rather than in the agreement. However, the agreements did not explicitly state that the original and amended applications were part of the agreement. In their applications:

- Sabina committed to a qualified investment of \$280,000,000, and they anticipated creating 48 jobs in their amended application.
- Golden Pass LNG committed to a qualified investment of \$1,000,000,000, and they anticipated creating 40 jobs in their amended application.
- Mesquite Wind and Post Oak Wind committed to a qualified investment of \$570,000,000, and they anticipated creating 10 jobs in their amended application.

Texas Tax Code, Section 313.027(e), requires agreements to describe with specificity the qualified investment that the business will make on or in connection with the qualified property that is subject to the appraisal limitation. Other property that is not specifically described in the agreement is not subject to the limitation unless the governing body of a school district, by official action, provides that the other property is subject to the limitation.

¹³ Chapter 3 is rated Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Either (1) including a provision in the agreement that describes the agreed-upon qualified investment amount and the number of jobs to be created or (2) explicitly stating that the original and amended applications are part of the agreement would increase the overall transparency of the agreement and help to ensure that the purpose and intent of Texas Tax Code, Chapter 313, are met.

The agreements could be transferred to a new business, but they did not specify that the new business must meet Texas Tax Code, Chapter 313, eligibility requirements.

The agreements allowed the businesses to transfer the agreements to a new business. However, the agreements did not specify that the new business must be eligible to receive an agreement. As a result, there is a risk that the agreements could be transferred to businesses that do not meet the eligibility requirements in Texas Tax Code, Chapter 313. All three agreements audited were transferred to affiliates.

The agreements did not include performance standards or require periodic deliverables to enable the school districts to verify whether the businesses met their commitments.

As discussed above, the original and amended applications for the agreements specified the qualified investments that the businesses committed to make and the numbers of jobs they committed to create. However, the agreements did not require the businesses to report their progress toward meeting those commitments.

The businesses submitted their annual eligibility and biennial progress reports in compliance with requirements that the Comptroller's Office established in 2010 (see Chapter 4 for more information about the reports). However, the Port Neches-Groves ISD school board approved the audited agreement in 2002, the Sabine Pass ISD school board approved the audited agreement in 2006, and the Clyde CISD school board approved the audited agreement in 2005. The audited agreements did not include provisions that required the businesses to submit any periodic performance reports or deliverables. Therefore, for approximately four to eight years before the Comptroller's Office established the reporting requirements, the businesses associated with the limitation agreements with the audited school districts were not required to submit progress reports to enable the districts to monitor compliance with the terms of the agreements.

Without specifying performance standards or periodic deliverables to monitor progress, the school districts did not have a defined methodology to obtain assurances that the businesses fulfilled the requirements of the agreements and complied with Texas Tax Code, Chapter 313.

Recommendations

The three school districts audited should consider amending the audited agreements to include:

- All information related to the agreed-upon investment amounts and the anticipated numbers of jobs to be created. (Alternatively, the school districts should consider explicitly stating in the agreements that the information in the related applications is incorporated into the agreements.)
- Provisions that require the school districts to assess and approve the eligibility of any business to which an agreement is transferred.
- Performance standards or requirements for the businesses to periodically submit deliverables that will enable the school districts to hold the businesses accountable for achieving desired results.

Chapter 4
Rating:
Medium¹⁴

Sabina, Golden Pass LNG, and Mesquite Wind and Post Oak Wind submitted annual eligibility reports and biennial progress reports to the school districts audited, as the Comptroller's Office required. The three school districts audited submitted all annual and biennial reports as required to the Comptroller's Office.

However, auditors identified discrepancies between the market values that the school districts audited reported in their cost data reports and the values that Sabina, Golden Pass LNG, and Mesquite Wind and Post Oak Wind reported in their annual and biennial progress reports. Additionally, the market values in the reports that the businesses reported were not always consistent with the values that the county appraisal districts reported, and auditors determined that inconsistent market values were used to calculate revenue protection payments and payments in lieu of taxes. Those discrepancies indicate that the school districts did not make corrections before submitting the reports to the Comptroller's Office.

As discussed in Chapter 1, statute does not require school districts to verify the information on annual eligibility reports and biennial progress reports, and the school districts did not perform verifications.

Each school district hired a consultant to assist in the administration of the audited agreements, including addressing reporting requirements and performing annual calculations of revenue protection payments and payments in lieu of taxes that the agreement required.

The annual eligibility reports and biennial progress reports provided inconsistent information.

Auditors identified discrepancies in the market values and number of qualifying jobs created that the businesses included in their annual eligibility reports and biennial progress reports for the same tax years. Specifically:

- Sabina reported market values in its 2014 biennial progress report that were consistent with the market values it reported in its annual eligibility reports for tax years 2009 through 2013. Additionally, except for tax year 2009, Sabina consistently reported the number of qualifying jobs created. The annual progress report for tax year 2009 stated that it created 34

¹⁴ Chapter 4 is rated Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

qualifying jobs; however, the 2014 biennial progress report stated that for tax year 2009, it created 35 qualifying jobs (see Table 5).

Table 5

Summary of Sabina Reporting				
Tax Year	Annual Eligibility Report (Form 50-772(A))		2014 Biennial Progress Report (Form 50-773(A))	
	Market Value	Number of Qualifying Jobs Created	Market Value	Number of Qualifying Jobs Created
2009	\$159,143,800	34	\$159,143,800	35
2010	\$106,240,300	34	\$106,240,300	34
2011	\$106,460,000	33	\$106,460,000	33
2012	\$73,459,100	33	\$41,552,700 ^a	33
2013	\$30,799,700	33	\$30,799,700	33

^a The appraised value was appealed by Sabina and reduced to the value in this table after the annual report was submitted to the Comptroller's Office.

Sources: The Comptroller's Office and Port Neches-Groves ISD.

- Golden Pass LNG reported inconsistent market values in its annual and biennial reports for tax years 2009 through 2013. The market values differed by at least \$1.8 million for each tax year, and the market values reported for the tax year 2011 differed by \$10,009,599. In addition, the numbers of jobs that Golden Pass LNG reported it created in its annual and biennial reports were inconsistent for tax years 2009 through 2012. For example, the annual eligibility report for tax year 2011 stated that it created 60 qualifying jobs; however, the 2014 biennial progress report stated that for tax year 2011, it created 48 qualifying jobs (see Table 6).

Table 6

Summary of Golden Pass LNG Reporting				
Tax Year	Annual Eligibility Report (Form 50-772)		2014 Biennial Progress Report (Form 50-773)	
	Market Value	Number of Qualifying Jobs Created	Market Value	Number of Qualifying Jobs Created
2009	\$323,558,440	43	\$313,572,953	41
2010	\$441,514,000	43	\$449,512,559	45
2011	\$623,825,990	60	\$613,816,391	48
2012	\$579,537,690	60	\$581,397,955	50
2013	\$555,613,100	47	\$563,488,614	47

Sources: The Comptroller's Office and Sabine Pass ISD.

- Mesquite Wind and Post Oak Wind reported inconsistent market values in their annual and biennial reports for tax years 2009, 2010, and 2012. The difference was minimal in 2012; however, the market values reported in 2009 and 2010 differed by \$429,330 and \$498,835, respectively. In addition, the annual eligibility report for tax year 2010 stated that they created 29 qualifying jobs; however, the 2014 biennial progress report stated that for tax year 2010, they created 69 qualifying jobs (see Table 7).

Table 7

Summary of Mesquite Wind and Post Oak Wind Reporting				
Tax Year	Annual Eligibility Report (Form 50-772)		2014 Biennial Progress Report (Form 50-773)	
	Market Value	Number of Qualifying Jobs Created	Market Value	Number of Qualifying Jobs Created
2009	\$384,605,410	69	\$385,034,740	69
2010	\$396,494,045	29	\$395,995,210	69
2011	\$340,853,530	52	\$340,853,530	52
2012	\$341,757,960	70	\$341,737,960	52
2013	\$288,125,030	40	\$288,125,030	40

Sources: The Comptroller's Office and Clyde CISD

The Comptroller's Office (1) requires businesses to submit annual eligibility reports and biennial progress reports to the school districts by May 15 of each year for which reports are required and (2) requires the school districts to submit those reports to the Comptroller's Office by June 15 of each year for which reports are required.

The market values that Sabina, Golden Pass LNG, and Mesquite Wind and Post Oak Wind reported on the annual and biennial reports did not match the market values that the county appraisal district reported.

Specifically:

- Sabina reported market values in its annual and biennial progress reports that were consistent with the market values that the Jefferson County Appraisal District reported for tax years 2009 through 2013. However, Sabina reported a market value in 2014 that was inconsistent with the value that the Jefferson County Appraisal District reported (see Table 8 on the next page).

Table 8

Sabina Appraisal District Market Value Comparison			
Tax Year	Annual Eligibility Report (Form 50-772)	2014 Biennial Progress Report (Form 50-773)	Jefferson County Appraisal District
2009	\$159,143,800	\$159,143,800	\$159,143,800
2010	\$106,240,300	\$106,240,300	\$106,240,300
2011	\$106,460,000	\$106,460,000	\$106,460,000
2012	\$73,459,100	\$41,552,700 ^a	\$41,552,700
2013	\$30,799,700	\$30,799,700	\$30,799,700
2014	\$36,186,100	Not Applicable	\$29,458,900

^a The appraised value was protested and reduced to this value.

Sources: The Comptroller's Office, Port Neches-Groves ISD, and Jefferson County Appraisal District.

- Golden Pass LNG reported market values in its annual reports for tax years 2009, 2010, 2012, 2013, and 2014 that were inconsistent with the market values that the Jefferson County Appraisal District reported. The difference for tax year 2009 was minimal. However, the market value Golden Pass reported for tax year 2010 was \$17,320,950 less than the market value reported by the Jefferson County Appraisal District. The market values reported for tax years 2012 through 2014 were at least \$9 million less than the market values reported by the Jefferson County Appraisal District. In addition, Golden Pass LNG reported market values in its biennial progress report covering tax years 2009 through 2013 that were inconsistent with the market values that the Jefferson County Appraisal District reported for the same tax years. The market values that Golden Pass LNG reported were at least \$8 million less than the county appraisal district market values for each tax year, with the highest market value difference of \$10,408,535 reported for tax year 2012 (see Table 9 on the next page).

Table 9

Golden Pass LNG Market Value Comparison			
Tax Year	Annual Eligibility Report (Form 50-772)	2014 Biennial Progress Report (Form 50-773)	Jefferson County Appraisal District
2009	\$323,558,440	\$313,572,953	\$323,588,440
2010	\$441,514,000	\$449,512,559	\$458,834,950
2011	\$623,825,990	\$613,816,391	\$623,825,990
2012	\$579,537,690	\$581,397,955	\$591,806,490
2013	\$555,613,100	\$563,488,614	\$571,646,710
2014	\$509,108,400	Not applicable	\$518,246,530

Sources: The Comptroller’s Office, Sabine Pass ISD, and Jefferson County Appraisal District.

- Mesquite Wind and Post Oak Wind reported market values in their annual eligibility reports for tax years 2010, 2011, 2013, and 2014 that were inconsistent with the market values that the Callahan County Appraisal District reported. The difference in the market values for tax years 2010, 2013, and 2014 were minimal; however, the market value that Mesquite Wind and Post Oak Wind reported for tax year 2011 was \$498,830 less than the market value reported by the Callahan County Appraisal District. In addition, they reported market values for tax years 2009 through 2013 in their 2014 biennial progress report that were inconsistent with the market values that the Callahan County Appraisal District reported for the same tax years. The market values reported by Mesquite Wind and Post Oak Wind for tax years 2012 and 2013 were minimally different from the values reported by the Callahan County Appraisal District. However, the values Mesquite Wind and Post Oak Wind reported for 2009 were \$429,330 more than the Callahan County Appraisal District reported, and the values they reported for tax years 2010 and 2011 were each \$498,830 less than the values reported by the Callahan County Appraisal District (see Table 10 on the next page).

Table 10

Mesquite Wind and Post Oak Wind Market Value Comparison			
Tax Year	Annual Eligibility Report (Form 50-772)	2014 Biennial Progress Report (Form 50-773)	Shackelford and Callahan County Appraisal Districts
2009	\$384,605,410	\$385,034,740	\$384,605,410
2010	\$396,494,045	\$395,995,210	\$396,494,040
2011	\$340,853,530	\$340,853,530	\$341,352,360
2012	\$341,757,960	\$341,737,960	\$341,757,960
2013	\$288,125,030	\$288,125,030	\$288,125,050
2014	\$258,549,920	Not applicable	\$258,401,790

Sources: The Comptroller's Office, Clyde CISD, Shackelford County Appraisal District, and Callahan County Appraisal District.

The market values and gross tax savings that the school districts reported on their biennial cost reports did not match the values that their consultant used to calculate revenue protection payments and payments in lieu of taxes.

Specifically:

- On its 2014 cost data report, Port Neches-Groves ISD did not include the supplemental payments (payments in lieu of taxes) it received from Sabina for tax years 2003, 2004, 2006, 2007, and 2008. Those supplemental payments totaled \$5,560,297.
- Sabine Pass ISD reported market values for tax years 2009 through 2013 on its 2014 biennial cost report that were inconsistent with the values its consultant used to calculate the revenue protection payments and payments in lieu of taxes for those years. Those differences totaled \$35,645,308. In addition, the amounts Sabine Pass ISD reported for gross tax savings through tax credits and the gross tax savings through the appraisal limitation were inconsistent with the consultant's calculations for each reported year.
- Clyde CISD reported a market value for tax year 2010 that was \$6,494,045 more than the market value the consultant used to calculate the revenue protection payments and payments in lieu of taxes. As a result, Clyde CISD received \$20,261 less than it should have received in the form of payments in lieu of taxes. Additionally, the amounts Clyde CISD reported on its 2014 biennial cost report for gross tax savings through the appraisal limitation were inconsistent with the consultant's calculations for tax years 2009 through 2012.

The Comptroller's Office requires school districts to submit biennial cost reports to the Comptroller's Office by July 15 of each even-numbered year.

Recommendations

The three school districts audited should:

- Ensure that the annual eligibility reports and the biennial progress reports they receive contain consistent information before they submit those reports to the Comptroller's Office.
- Ensure that the market values, supplemental payments, and gross tax savings they report on their biennial cost reports are consistent with the information that their consultant uses to calculate revenue protection payments and payments in lieu of taxes.

Chapter 5
Rating:
Medium ¹⁵

The school districts audited did not comply with statute regarding how tax credits should be provided to the businesses. Texas Tax Code, Section 313.104, required the school districts to direct the tax assessor-collector for the school district to apply the tax credits against the future taxes imposed on the qualified property.

The school districts paid tax credits directly to the businesses with which they had agreements, instead of applying tax credits to future property tax bills as statute required. At the direction of the Texas Education Agency:

- Port Neches-Groves ISD paid \$3,266,351 in tax credits directly to Sabina for tax years 2006 through 2014. That amount was equal to the total amount of tax credits that Sabina was eligible to receive under Texas Tax Code, Section 313.102.
- Sabine Pass ISD paid \$922,527 in tax credits directly to Golden Pass LNG for tax years 2010 through 2014. Under Texas Tax Code, Section 313.102, Golden Pass LNG was eligible to receive tax credits totaling \$1,291,532 throughout the life of the agreement.
- Clyde CISD paid \$849,609 in tax credits directly to Mesquite Wind and Post Oak Wind for tax years 2009 through 2014. Under Texas Tax Code, Section 313.102, the businesses were eligible to receive tax credits totaling \$990,737 throughout the life of the agreement.

In addition, Port Neches-Groves ISD erroneously paid a \$213,887 tax credit for tax year 2014 to Sabina after the end of the tax credit settle-up period, and it did not comply with statutory requirements to correct that erroneous payment. That occurred because of an error in the length of the settle-up period specified in the agreement. Under the version of Texas Tax Code, Section 313.104, effective at the time of the agreement, settle-up tax credits were limited to the total amount of ad valorem taxes imposed on the qualified property in the first year after the limitation period expired. However, Port Neches-Groves ISD paid tax credit settle-up payments in both the first tax year and the second tax year after the limitation expired, which resulted in the overpayment.

Port Neches-Groves ISD's consultant identified the error discussed above and requested that Sabina refund the overpayment to Port Neches-Groves ISD in

¹⁵ Chapter 5 is rated Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

March 2016. However, that process did not comply with statutory requirements for correcting overpayments. Texas Tax Code, Section 313.105, imposes an additional tax on a qualified property to recover any overpayment plus interest at an annual rate of 7 percent calculated from the date the tax credit was issued. In addition, a tax lien attaches to the qualified property in favor of the school district to secure payment. Sabina refunded the overpayment in April 2016 but did not pay the required additional tax.

Recommendations

In processing future tax credits, the three school districts audited should:

- Comply with statute related to tax credits, and direct the collector of taxes to apply tax credits against the future property taxes imposed on the property subject to an agreement.
- Comply with statutory requirements to correct erroneous tax credit payments.

Chapter 6
Rating:

Medium ¹⁶

The audited school districts' current conflict of interest policies included all statutory requirements in Texas Local Government Code, Chapters 171 and 176; however, those policies did not require the filing of disclosure statements on a regular basis or affirmations that conflicts did not exist on an annual basis. That increases the risk that a conflict of interest could exist but is not disclosed. Additionally, the policies and disclosure forms were not specific to agreements. Including policies specific to agreements would increase the overall accountability and transparency of the agreements.

Port Neches-Groves ISD also did not always enforce its policy for school board members to abstain from participation in any matter involving a business with which board members have a substantial interest. A Port Neches-Groves ISD board member disclosed a conflict of interest based on that individual's employment relationship with one of the parties associated with the audited agreement. In most instances, the board member abstained from voting on matters concerning the audited agreement. However, Port Neches-Groves ISD school board meeting minutes indicated that board member initiated the motion to approve the application for tax credits associated with the audited agreement while that conflict existed.

Recommendations

Port Neches-Groves ISD should ensure that school board members involved with agreements comply with conflict of interest disclosure requirements.

The three school districts audited should consider including a requirement in their conflict of interest policies requiring board members, district employees, and vendors to complete conflict of interest disclosure forms on an annual basis to confirm whether conflicts exist.

¹⁶ Chapter 6 is rated Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Chapter 7
Rating:
Medium ¹⁷

Opportunities exist for the three school districts audited to strengthen certain administrative processes. While the issues discussed below may not be material to determining compliance with statute, they are significant to each school district's management of Chapter 313 agreements.

The school districts did not have a process for reviewing information related to revenue protection payments and payments in lieu of taxes (see text box for additional detail on revenue protection payments). Therefore, they did not always ensure that their consultant accurately calculated the amounts that they should have billed for revenue protection payments and payments in lieu of taxes. As a result:

Revenue Protection Payments

Revenue protection payments are intended to protect a school district against any loss of maintenance and operations tax revenues as a result of an agreement. They may also include any costs that the school district incurs during the term of the agreement, including tax credits for which a school district does not receive additional state aid from the State.

Sources: Texas Tax Code, Chapter 313; and the audited school districts.

- Sabina overpaid Port Neches-Groves ISD by a net total of \$108,497.
- Golden Pass LNG underpaid Sabine Pass ISD by a net total of \$21,932.
- Mesquite Wind and Post Oak Wind underpaid Clyde CISD by a net total of \$32,491.

In 2014, the consultant for Sabine Pass ISD calculated the revenue protection payments using an estimated property value for maintenance and operations ad valorem taxes that was 51 percent higher than the property value that the Jefferson County Appraisal District provided to auditors. That could have affected the amount of the revenue protection payment that Sabine Pass ISD received.

Clyde CISD included a provision in the audited agreement requiring its consultant to recalculate revenue protection payments when final market values became available. Auditors noted that, for tax year 2008, the final market values decreased and, in that instance, Clyde CISD reduced the future revenue protection payments owed by Mesquite Wind and Post Oak Wind. However, auditors noted that, in tax year 2010 when the final market values increased, Clyde CISD did not receive additional revenue protection payments from those businesses.

¹⁷ Chapter 7 is rated Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Recommendations

The three school districts audited should consider developing and implementing a process to review and verify that the consultant's calculations for revenue protection payments and payments in lieu of taxes are accurate.

Sabine Pass ISD and Clyde CISD should consider developing a process to determine how to correct errors identified in payments from a business with which it has an agreement.

Status of Prior Audit Recommendations Addressed to the Comptroller's Office

Auditors followed up on 11 recommendations addressed to the Comptroller's Office in *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014) (see text box for definitions of each implementation status). Auditors determined that:

- Ten of the recommendations were fully implemented.
- One recommendation was no longer applicable due to a change in statute.

Implementation Status Definitions
The definition of each implementation status is as follows:
<ul style="list-style-type: none"> ▪ Fully Implemented - Successful development and use of a process, system, or policy to implement a prior recommendation. ▪ Substantially Implemented - Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation. ▪ Incomplete/Ongoing - Ongoing development of a process, system, or policy to address a prior recommendation. ▪ Not Implemented - Lack of a formal process, system, or policy to address a prior recommendation.

Table 11 provides details on the implementation status of the 11 recommendations.

Table 11

Status of the Comptroller's Office's Implementation of Prior Audit Recommendations					
No.	Chapter from Report No. 15-009	Recommendation	Implementation Status as Reported by the Comptroller's Office (as of December 2015)	Implementation Status as Determined by Auditors During This Audit	Auditor Comments
1	2-A	The Comptroller's Office should obtain and reconcile information from school districts and county appraisal districts on property under agreements, including property locations, property values, and property tax payments.	Substantially Implemented	Fully Implemented	
2	2-A	The Comptroller's Office should obtain and post on its Web site copies of tax credit applications from all school districts that have processed tax credits through December 2013.	Substantially Implemented	Fully Implemented	
3	2-A	The Comptroller's Office should establish a process to obtain and post on its Web site copies of all tax credit applications that school districts have processed.	Substantially Implemented	Fully Implemented	
4	2-A	The Comptroller's Office should obtain copies of all agreements, including any amendments.	Substantially Implemented	Fully Implemented	
5	2-A	The Comptroller's Office should establish a process to ensure that all agreements include applicable required provisions. ^a	Substantially Implemented	Fully Implemented	

Status of the **Comptroller's Office's** Implementation of Prior Audit Recommendations

No.	Chapter from Report No. 15-009	Recommendation	Implementation Status as Reported by the Comptroller's Office (as of December 2015)	Implementation Status as Determined by Auditors During This Audit	Auditor Comments
6	2-A	<p>The Comptroller's Office should adopt rules that require agreements to include provisions that:</p> <ul style="list-style-type: none"> ▪ Define performance requirements (1) that school districts must include in their agreements with businesses and (2) for which school districts should review compliance on an annual basis. ▪ Define the process to determine tax credit amounts and the requirements a business must meet to receive a tax credit. ▪ Specify that the Comptroller's Office must approve the transfer of agreements from one business to another business. That approval should be based on determining whether a business that will receive an agreement is eligible to have an agreement under Texas Tax Code, Chapter 313. ▪ Ensure that the Comptroller's Office and the State Auditor's Office have access to records the business maintains. 	Substantially Implemented	Fully Implemented	
7	2-B	<p>The Comptroller's Office should document and where necessary establish the procedures and criteria it uses to determine whether an application for an agreement is complete and the factors it uses to determine whether to recommend an application for an agreement.</p>	Fully Implemented	Fully Implemented	
8	2-B	<p>The Comptroller's Office should document and where necessary establish its methodology for evaluating the reasonableness and validity of (1) applicants' and school districts' responses to questions on applications for agreements and (2) the associated economic impact evaluation.</p>	Fully Implemented	Fully Implemented	
9	2-B	<p>The Comptroller's Office should document and where necessary establish an interagency agreement describing any assistance the Texas Education Agency (TEA) provides in reviewing applications for agreements, including the methodologies that TEA will follow.</p>	Not Applicable	Not Applicable	House Bill 3390 (83rd Legislature, Regular Session) revised the requirements for applications under Texas Tax Code, Chapter 313, and there is no current requirement for TEA assistance.

Status of the **Comptroller's Office's** Implementation of Prior Audit Recommendations

No.	Chapter from Report No. 15-009	Recommendation	Implementation Status as Reported by the Comptroller's Office (as of December 2015)	Implementation Status as Determined by Auditors During This Audit	Auditor Comments
10	2-C	The Comptroller's Office should document and communicate to school districts the methodology for calculating tax credits and the requirements for reporting and documenting tax credits.	Fully Implemented	Fully Implemented	
11	2-E	The Comptroller's Office should require management and staff to affirm that conflicts of interests do not exist for each application and agreement they review or document any potential conflicts of interest that may exist.	Fully Implemented	Fully Implemented	

^a The Comptroller's Office created an agreement template that contains the applicable required provisions. The template was finalized in January 2016 and is posted on the Comptroller's Office's Web site.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Determine whether selected major agreements under the Texas Economic Development Act:
 - Accomplish the purposes of Texas Tax Code, Section 313.003.
 - Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
 - Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.
- Determine whether there are ways to increase the efficiency and effectiveness of the administration of the Texas Economic Development Act.

In addition, the audit included determining the implementation status of prior State Auditor's Office recommendations to the Office of the Comptroller of Public Accounts (Comptroller's Office) related to the administration of Chapter 313 agreements and evaluate whether management has taken corrective actions to address the recommendations as reported in *An Audit of Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

Scope

The scope of the audit covered selected applications and appraisal limitation agreements (agreements) processed from fiscal year 2003 through fiscal year 2014. The scope for determining the implementation status of prior recommendations to the Comptroller's Office covered applications, agreements, tax credit policies and processes, and processes regarding staff conflict of interest disclosures established after the audit recommendations were implemented, as reported by management of the Comptroller's Office.

Methodology

The audit methodology included selecting three school districts with agreements for audit. Auditors selected the agreements using information reported by the businesses with agreements, including estimated net tax benefit to the businesses as a result of the appraisal limitation, total gross savings for the businesses due to the appraisal limitation and tax credits, number of jobs the businesses reported that they created compared with the number of jobs they committed to create, and the qualified investment the businesses made. Auditors also considered school districts with agreements providing tax credits in the years after the appraisal limitation period had expired. The three agreements selected were:

- An agreement between the Port Neches-Groves Independent School District (Port Neches-Groves ISD) and Sabina Petrochemicals LLC, ATOFINA Petrochemicals, Inc., and BASF Corporation for property used in manufacturing.
- An agreement between the Sabine Pass Independent School District (Sabine Pass ISD) and Golden Pass LNG LLC and Golden Pass LNG Terminal LLC for property used in manufacturing.
- An agreement between the Clyde Consolidated Independent School District (Clyde CISD) and Mesquite Wind LLC and Post Oak Wind LLC for property used in renewable energy electric generation (a wind farm).

The audit methodology also included testing applications, agreements, progress reports, tax credit documentation, and conducting interviews with school districts, consultants, and county appraisal district staff.

In addition, the audit methodology included collecting information and documentation, performing selected tests and other procedures, analyzing and evaluating the results of the tests, and conducting interviews with the Comptroller's Office management and staff.

The audit methodology also included reviewing the Comptroller's Office's Texas Tax Code, Chapter 313, policies and procedures regarding staff disclosure of conflicts of interest, processing applications, processing agreements, and disclosure of tax credits to evaluate whether management has implemented prior State Auditor's Office recommendations related to the administration of Texas Tax Code, Chapter 313, as reported in *An Audit of Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014).

Data Reliability

For the first two audit objectives, auditors' assessment of the reliability of the agreement data that the Comptroller's Office used to prepare the January 2015 *Report of the Texas Economic Development Act* was based on prior audit work and performing a limited review of the data to ensure the agreement data was identical to the data used in the prior audit work. Auditors determined that the data was sufficiently reliable for the purposes of this audit.

Auditors' assessment of the reliability of the additional state aid payment data relating to tax credits from the Texas Education Agency relied on prior audit work performed. Auditors determined that data was sufficiently reliable for the purposes of the audit.

Information collected and reviewed included the following:

- Agreements between school districts and businesses.
- Application documentation, including economic impact evaluations, school district financial projections, school board findings, recommendations, and correspondence from the Comptroller's Office to school districts.
- Minutes from school districts' school board meetings.
- Annual eligibility reports, biennial progress reports, and biennial cost data request reports.
- Conflict of interest statements signed by selected school districts' school board members and management.
- Tax credit applications, requests for additional state aid, property tax bills, property tax receipts, and tax credit payments.
- Agreements between school districts and consultants.
- Agreement data and biennial progress data used to develop the Comptroller's Office's *Report of the Texas Economic Development Act*, January 2015.
- Additional state aid payment data for tax years 2006 through 2014.
- Comptroller's Office policies and procedures.
- Selected conflict of interest statements signed by Comptroller's Office staff.

Procedures and tests conducted included the following:

- Interviewed members of each audited school district's school board, management, staff, consultants, county appraisal district, and county tax assessor collector.
- Interviewed management and staff of the Comptroller's Office.
- Reviewed school district policies and procedures.
- Reviewed school board meeting minutes.
- Reviewed conflict of interest statements prepared by members of school boards and school district management.
- Reviewed application documentation.
- Reviewed terms and conditions for selected agreements.
- Reviewed consultant contracts with school districts.
- Reviewed annual eligible reports, biennial progress reports, and biennial cost data request reports for selected agreements.
- Reviewed tax credit applications, tax receipts, tax bills, and tax credit payments.
- Reviewed Comptroller's Office policies and procedures.
- Reviewed conflict of interest statements prepared by Comptroller's Office staff.
- Reviewed the Comptroller's Office's Form 50-826, Texas Economic Development Act agreement template.
- Reviewed the Comptroller's Office's Texas Ahead Web site.

Criteria used included the following:

- Texas Tax Code, Chapter 313.
- Texas Local Government Code, Chapters 171 and 176.
- Texas Education Code, Chapter 42.
- Title 34, Texas Administrative Code, Chapter 9.
- Title 10, Texas Administrative Code, Chapter 178.

- Title 19, Texas Administrative Code, Chapter 61.
- Audited school districts' policies and procedures.
- Comptroller's Office policies and procedures.
- Agreements between the audited school districts and businesses.
- Agreements between the audited school districts and consultants.

Project Information

Audit fieldwork was conducted from February 2016 through July 2016. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Philip Stringer, MACC, CPA (Project Manager)
- Andrea Focht-Williams, MACT, CPA, CFE (Assistant Project Manager)
- Michelle DeFrance, MACy, CPA
- Michael Gieringer, MS, CFE
- Alejandra Moreno
- Armando Sanchez, MBA
- Tony Thomas
- Julia Youssefnia, CPA
- Anca Pinchas, CPA, CISA, CIDA (Quality Control Reviewer)
- Brianna C. Pierce, CPA (Quality Control Reviewer)
- Verma L. Elliott, CPA, CIA, CGAP, MBA (Assistant State Auditor)

Issue Rating Classifications and Descriptions

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 12 provides a description of the issue ratings presented in this report.

Table 12

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Selected Information on the Three Agreements Audited

Table 13 shows selected background and financial information related to the three agreements for limitations on the appraised value of property (agreements) audited. Specifically:

- Port Neches-Groves Independent School District's (Port Neches-Groves ISD) agreement with Sabina Petrochemicals, LLC; ATOFINA Petrochemicals, Inc.; and BASF Corporation.
- Sabine Pass Independent School District's (Sabine Pass ISD) agreement with Golden Pass LNG, LLC and Golden Pass LNG Terminal, LLC (an Affiliate of Exxon Mobil Corporation).
- Clyde Consolidated Independent School District's (Clyde CISD) agreement with Mesquite Wind, LLC and Post Oak Wind, LLC.

Table 13

Background Information on the Agreements Audited			
	School Districts		
	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD
Businesses with Agreement	Sabina Petrochemicals, LLC; ATOFINA Petrochemicals, Inc.; and BASF Corporation	Golden Pass LNG, LLC and Golden Pass LNG Terminal, LLC (an Affiliate of Exxon Mobil Corporation)	Mesquite Wind, LLC and Post Oak Wind, LLC
Application Number	2	27	39
Business Category	Manufacturing	Manufacturing	Renewable energy electric generation (wind farm)
County	Jefferson	Jefferson	Shackelford and Callahan
Type of School District	Rural	Rural	Rural
Agreement Execution Date	December 10, 2002	March 31, 2006	November 30, 2005
Length of Agreement	January 1, 2003, through December 31, 2015	January 1, 2007, through December 31, 2019	January 1, 2006, through December 31, 2018
Appraisal Limitation	\$30,000,000	\$30,000,000	\$5,000,000
Tax Year 2015 Appraised Value	\$29,458,900	\$454,149,770	\$205,989,670
Net Tax Benefit to Business (reported on the 2014 Biennial Cost Data Request Form)	\$10,112,846	\$19,482,544	\$14,515,526

Background Information on the Agreements Audited			
	School Districts		
	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD
Projected Total Net Tax Benefit to Business (reported on the 2014 Biennial Cost Data Request Form)	Not applicable ^a	\$29,529,838	\$18,185,652
Number of Qualifying Jobs Created as Reported by the Business (as of December 31, 2014)	35	53	39
Projected Qualified Jobs to Be Created	40	40	10
Projected Total Net Tax Benefit per Qualifying Job Created (calculated by auditors)	\$288,938	\$557,167	\$466,299
Total Tax Credits Paid (as of December 31, 2014)	\$3,226,351	\$922,527	\$849,203
Total Tax Credits the Business Is Eligible to Receive	\$3,012,464	\$1,291,532	\$990,737
Total Projected Investment	\$280,000,000	\$1,000,000,000	\$570,000,000
Qualified Investment	\$240,544,750	\$500,000,000	\$358,960,155
Revenue Protection Payments School District Received from Businesses (as of December 31, 2015)	\$1,886,281	\$1,224,701	\$357,065
Supplemental Payments School District Received from Businesses (as of December 31, 2015)	\$8,655,639 ^b	\$5,519,346 ^c	\$8,905,955 ^d
Other Tax Abatements and Other Economic Development Incentives Business Received	Property tax abatements from the Jefferson County Appraisal District and the Sabine Neches Navigation District.	Property tax abatements from Jefferson County, the Sabine Neches Navigation District, and the Port of Sabine Pass; pollution control exemptions from the Texas Commission on Environmental Quality	Property tax abatements from Shackelford County, Callahan County, and the Shackelford County Hospital District. Appraisal limitation 313 agreement with Albany Independent School District.

Background Information on the Agreements Audited

	School Districts		
	Port Neches-Groves ISD	Sabine Pass ISD	Clyde CISD

^a The valuation limitation period expired after the 2012 tax year; therefore, projections are no longer applicable.

^b Article IV of the agreement included a requirement for Sabina Petrochemicals, LLC to pay Port Neches-Groves ISD the difference between the agreed-upon minimum qualified investment amount for tax years 2003 and 2004 and the appraised value of that investment during the same time period, as well as a requirement to make annual payments during the limitation period of \$1,400,000 or the amount of the net tax benefit received as a result of the agreement, whichever was less, in tax years 2006 through 2012.

^c Article IV of the agreement required Golden Pass, LNG, LLC to make a donation of \$750,000 upon expiration of 30 days after the agreement approval date and to make annual payments of 16 percent of the net tax benefit received as a result of the agreement in tax years 2009 through 2017 to Sabine Pass ISD.

^d Article III of the agreement required Mesquite Wind, LLC and Post Oak Wind, LLC to make annual payments to Clyde CISD in amounts equal to 40 percent of any tax benefit received as a result of the agreement for reductions in taxable value up to \$250,000,000 and 30 percent of any tax benefit received as a result of the agreement for reductions in taxable value in excess of \$250,000,000 in tax years 2008 through 2015.

Sources: Information from school districts, county appraisal districts, the Texas Education Agency, and the Office of the Comptroller of Public Accounts.

Summary of Additional State Aid Paid (Tax Credits) and Projected to Be Paid from Tax Years 2006 Through 2031

According to Texas Education Code, Section 42.2515, the Texas Education Agency may provide additional state aid payments to school districts for tax credits under Texas Tax Code, Chapter 313. The estimated tax credits total approximately \$638 million from tax year 2006 through tax year 2031. The Office of the Comptroller of Public Accounts (Comptroller's Office) had processed 282 agreements and received one application that was eligible for tax credits as of December 31, 2015.

As of December 31, 2015, the Texas Education Agency had paid a total of approximately \$48 million to 55 school districts that had requested additional state aid for tax credits the school districts had issued to businesses with agreements from tax year 2006 through tax year 2014.

Table 14 presents tax credit information from the Comptroller's Office and the Texas Education Agency.

Table 14

Tax Credit Information for Agreements and Applications as of December 31, 2015	
Category	Amount
Estimated tax credits that school districts may issue to businesses with executed agreements.	\$635,925,998
Estimated tax credits that school districts may issue to businesses with applications that the Comptroller's Office has received but for which agreements have not yet been executed.	\$2,228,200
Estimated liability to the State for tax credits that school districts may issue to businesses with executed agreements or that have filed applications.	\$590,153,513
Total additional state aid payments from the Texas Education Agency to school districts for tax credits that school districts issued to businesses with agreements.	\$48,000,685

Sources: The **Comptroller's Office** and Texas Education Agency.

Property Tax Revenue Not Collected as a Result of Agreements for Tax Years 2005 Through 2015

For tax years 2005 through 2015, county appraisal districts reported to the Office of the Comptroller of Public Accounts (Comptroller's Office) that property tax revenue not collected by school districts as a result of agreements for limitations on the appraised value of property (agreements) totaled approximately \$1.403 billion.

Table 15 summarizes the total reported property tax revenue not collected by school districts as a result of agreements for tax years 2005 through 2015. The information for tax year 2015 is based on preliminary information reported by the county appraisal districts and does not incorporate changes resulting from property owner protests and property value study audits. The information for tax years 2005 through 2014 is final information.

Table 15

Total Reported Property Tax Revenue Not Collected from Agreements Tax Year 2005 through Tax Year 2015 ^a	
Tax Years	Property Tax Revenue Not Collected
2011 through 2015	\$ 1,138,732,556
2005 through 2010	264,442,073
Total	\$1,403,174,629
^a County appraisal districts provided the data in this table to the Comptroller's Office, and the State Auditor's Office did not audit this data.	

Source: The Comptroller's Office.

Table 16 summarizes the property values that all county appraisal districts reported for tax years 2011 through 2015.

Table 16

Property Values Reported by All County Appraisal Districts in Texas Tax Year 2011 through Tax Year 2015 ^a						
Tax Year	Appraisal Value	Taxable Value for Maintenance and Operations Purposes	Taxable Value for Interest and Sinking Fund Purposes	Property Tax Revenue	Property Tax Revenue Not Collected from Agreements	Percent of Property Tax Revenue Not Collected (calculated by auditors)
2015	\$2,705,745,231,206	\$2,130,246,126,041	\$2,149,812,285,706	\$ 28,261,771,235	\$ 260,331,590	0.92%
2014	\$2,520,477,350,584	\$2,037,680,893,155	\$2,055,726,331,106	26,792,677,172	237,598,027	0.89%
2013	\$2,326,066,320,168	\$1,880,119,552,001	\$1,899,812,042,303	24,854,671,461	222,578,432	0.90%
2012	\$2,208,817,007,702	\$1,752,926,534,827	\$1,769,849,324,749	23,072,781,962	221,572,866	0.96%
2011	\$2,120,439,535,886	\$1,673,870,904,780	\$1,688,998,383,088	22,002,289,358	196,651,641	0.89%
Totals				\$124,984,191,188	\$1,138,732,556	

^a County appraisal districts provided the data in this table to the Comptroller's Office, and the State Auditor's Office did not audit this data.

Source: The Comptroller's Office.

Table 17 summarizes the property values that county appraisal districts with agreements reported for tax years 2011 through 2015.

Table 17

Property Values Reported by County Appraisal Districts with Agreements in Texas Tax Year 2011 Through Tax Year 2015 ^a							
Tax Year	Appraisal Value	Taxable Value for Maintenance and Operations Purposes	Taxable Value for Interest and Sinking Fund Purposes	Property Tax Revenue	Property Tax Revenue Not Collected from Agreements	Percent of Property Tax Revenue Not Collected (calculated by auditors)	Average Percent of School District Revenue Not Collected (calculated by auditors)
2015	\$183,042,770,756	\$125,466,202,545	\$145,032,362,210	\$ 1,703,450,421	\$ 260,331,590	15.28%	59.13%
2014	\$188,846,214,840	\$139,859,415,200	\$157,904,853,151	1,908,908,403	237,598,027	12.45%	64.61%
2013	\$155,664,829,687	\$124,154,987,365	\$141,018,649,658	1,920,441,112	222,578,432	11.59%	26.52%
2012	\$144,640,754,718	\$115,639,533,513	\$132,562,323,435	1,542,029,240	221,572,866	14.37%	64.32%
2011	\$123,550,406,163	\$98,375,414,115	\$113,502,892,423	1,326,753,181	196,651,641	14.82%	68.18%
Totals				\$8,401,582,357	\$1,138,732,556		

^a County appraisal districts provided the data in this table to the Comptroller's Office, and the State Auditor's Office did not audit this data.

Source: The Comptroller's Office.

Table 18 summarizes the property values that all county appraisal districts reported for tax years 2005 through 2010.

Table 18

Property Values Reported by All County Appraisal Districts in Texas Tax Year 2005 through Tax Year 2010 ^a					
Tax Year	Appraisal Value	Taxable Value ^b	Property Tax Revenue	Property Tax Revenue Not Collected from Agreements	Percent of Property Tax Revenue Not Collected (calculated by auditors)
2010	\$2,094,207,272,645	\$1,655,152,584,816	\$ 21,558,289,126	\$ 117,276,160	0.54%
2009	\$2,120,661,300,153	\$1,683,700,155,921	21,751,400,885	66,577,117	0.31%
2008	\$2,086,830,275,980	\$1,663,375,273,082	21,149,319,188	40,796,278	0.19%
2007	\$1,876,060,708,651	\$1,500,811,983,249	18,817,215,656	23,664,901	0.13%
2006	\$1,673,514,101,939	\$1,348,691,120,811	20,811,701,140	10,597,708	0.05%
2005	\$1,490,671,558,947	\$1,198,525,740,074	20,150,818,051	5,529,909	0.03%
Totals			\$124,238,744,046	\$264,442,073	

^a County appraisal districts provided the data in this table to the Comptroller's Office, and the State Auditor's Office did not audit this data.

^b Prior to tax year 2011, the taxable value was not divided between maintenance and operations purposes and interest and sinking fund purposes.

Source: The Comptroller's Office.

Table 19 summarizes the property values that county appraisal districts with agreements reported for those same tax years.

Table 19

Property Values Reported by County Appraisal Districts with Agreements in Texas Tax Year 2005 Through Tax Year 2010 ^a						
Tax Year	Appraisal Value	Taxable Value ^b	Property Tax Revenue	Property Tax Revenue Not Collected from Agreements	Percent of Property Tax Revenue Not Collected (calculated by auditors)	Average Percent of School District Revenue Not Collected (calculated by auditors)
2010	\$175,730,901,354	\$150,622,155,575	\$ 1,922,644,398	\$ 117,276,160	6.10%	96.23%
2009	\$151,297,694,986	\$131,127,734,455	1,631,057,616	66,577,117	4.08%	58.59%
2008	\$78,916,982,668	\$67,752,556,214	867,518,962	40,796,278	4.70%	18.07%
2007	\$67,814,965,270	\$59,179,390,554	731,319,717	23,664,901	3.24%	9.55%
2006	\$24,918,316,302	\$21,223,540,136	294,425,873	10,597,708	3.60%	10.21%
2005	\$14,068,655,865	\$11,688,382,889	183,598,621	5,529,909	3.01%	3.55%
Totals			\$5,630,565,187	\$264,442,073		

^a County appraisal districts provided the data in this table to the Comptroller's Office, and the State Auditor's Office did not audit this data.

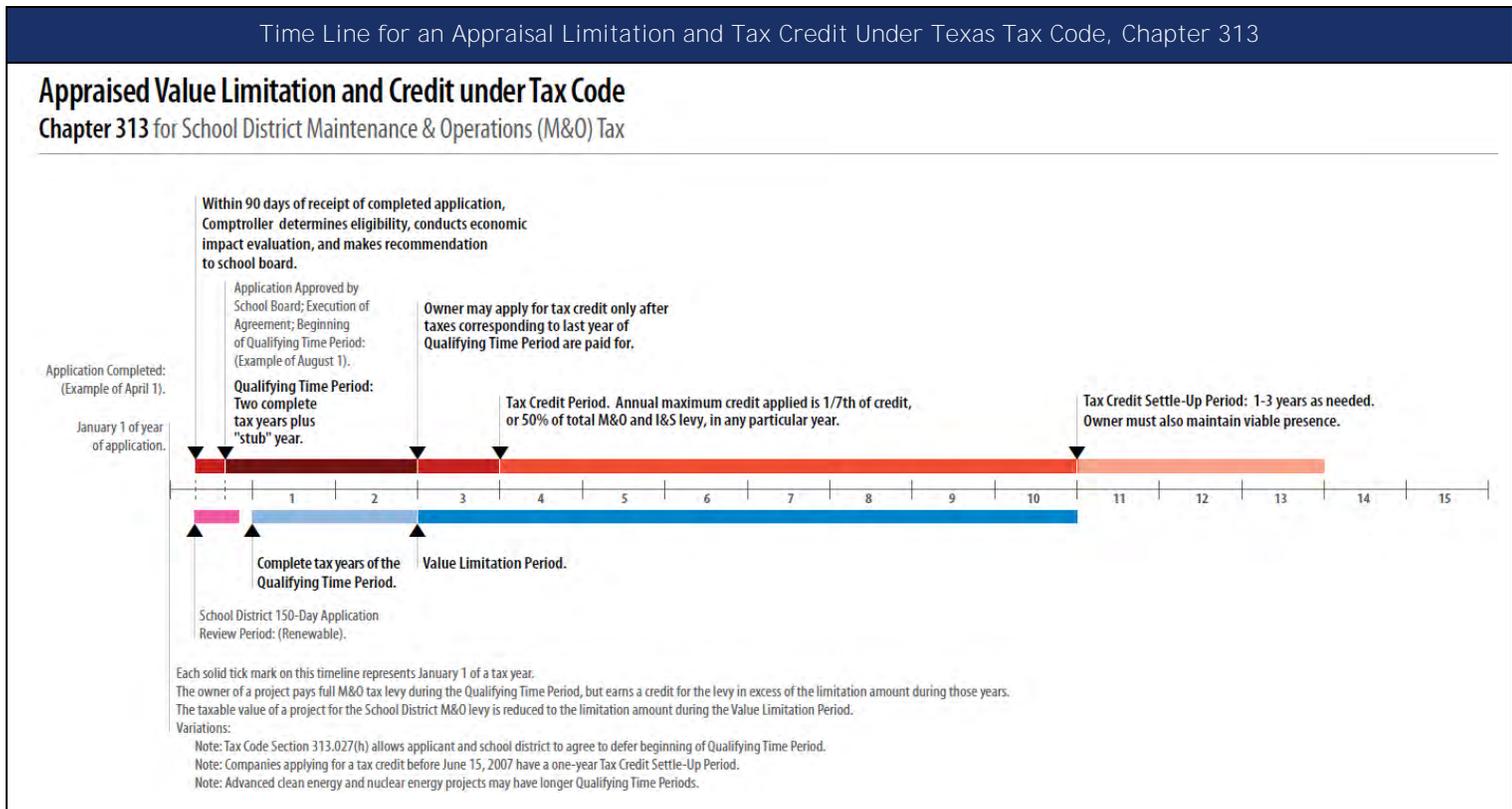
^b Prior to tax year 2011, the taxable value was not divided between maintenance and operations purposes and interest and sinking fund purposes.

Source: The Comptroller's Office.

Time Line of Appraisal Limitation and Tax Credits Under Texas Tax Code, Chapter 313

Figure 1 shows an example of a time line for an appraisal limitation and tax credit under Texas Tax Code, Chapter 313, as illustrated by the Office of the Comptroller of Public Accounts (Comptroller’s Office).

Figure 1



Source: The Comptroller’s Office.

Glossary of Selected Terms Related to Agreements

Table 20 lists the definitions for certain terms used in the administration of agreements for limitations on the appraised value of property (agreements).

Table 20

Glossary of Selected Terms Related to Agreements	
Term	Definition
Annual eligibility report	<p>The Office of the Comptroller of Public Accounts (Comptroller's Office) requires each agreement holder or its authorized representative to submit annual eligibility reports to the school district by May 15 of every year and to use information from the previous tax year in those reports.</p> <p>School districts are required to review those reports, retain the original reports, and submit PDF versions of the completed and signed reports and any attachments to the Comptroller's Office by June 15 of every year.</p>
Biennial progress report	<p>The Comptroller's Office requires each agreement holder or its authorized representative to submit biennial progress reports to the school district by May 15 of each even-numbered year.</p> <p>The Comptroller's Office requests that that agreement holder complete the spreadsheet version of the biennial progress report and submit both an unsigned electronic version and a signed hard-copy version (with any attachments) to the school district. School districts are required to forward those reports to the Comptroller's Office by June 15 of each even-numbered year.</p>
Biennial school district cost data request form	<p>The Comptroller's Office requires school districts to submit the biennial school district cost data request form to the Comptroller's Office by July 15 of each even-numbered year. That form indicates, for each project that is the subject of an agreement, actual and estimated property values, tax rates, payments in lieu of taxes, extraordinary educational expenses, and revenue protection payments.</p>
Payments in lieu of taxes	<p>The terms of the agreements audited specified that payments in lieu of taxes are intended to support a school district as a result of its consideration in executing an agreement with a business.</p> <p>The Sabine Pass Independent School District agreement audited and the Clyde Consolidated Independent School District agreement audited specified that the businesses would pay the school districts an annual payment that was based on a percentage of the net tax benefit the businesses receive each tax year.</p> <p>The Port Neches-Groves Independent School District agreement audited specified a payment would be due at the end of the qualifying time period if the appraised value of the qualified investment did not meet an agreed-upon minimum value during the initial two years of the qualifying time period. The agreement also specified a set payment for years 4 through 10 of the agreement that would be reduced only if the payment amount was more than the tax savings for those years.</p>
Qualifying investment	<p>As of December 31, 2015, Texas Tax Code, Section 313.021(1), defined qualifying investment as follows:</p> <p>Tangible personal property that is first placed in service in Texas 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) of the U.S. Internal Revenue Code of 1986.</p> <p>Tangible personal property that is first placed in service in Texas 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:</p> <ul style="list-style-type: none"> ▪ Integrated systems, fixtures, and piping. ▪ All property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances.

Glossary of Selected Terms Related to Agreements

Term	Definition
	<ul style="list-style-type: none"> ▪ Production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting. <p>Tangible personal property that is first placed in service in Texas 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:</p> <ul style="list-style-type: none"> ▪ Property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power. ▪ Property and systems necessary to control radioactive contamination. <p>Tangible personal property that is first placed in service in Texas 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:</p> <ul style="list-style-type: none"> ▪ 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. ▪ Property used in handling materials to be used as 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 statute. <p>Tangible personal property that is first placed in service in Texas 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 Texas Health and Safety Code, Section 382.003; Health and Safety Code;</p> <p>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 statute.</p>
Qualifying job	<p>As of December 31, 2015, Texas Tax Code, Section 313.021(3), defined a qualifying job as a permanent, full-time job that meets all of the following:</p> <ul style="list-style-type: none"> ▪ Requires at least 1,600 hours of work a year. ▪ Is not transferred from one area in Texas to another area in Texas. ▪ Is not created to replace a previous employee. ▪ Is covered by a group health benefit plan for which a 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. ▪ Pays at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located.
Qualified property	<p>As of December 31, 2015, Texas Tax Code, Section 313.021(2), defined qualified property as follows:</p> <p>Land:</p> <ul style="list-style-type: none"> ▪ That is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, [Texas] Government Code. ▪ 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 submits a complete application for a limitation on appraised value under this subchapter. ▪ That is not subject to a tax abatement agreement entered into by a school district under [Texas Tax Code], Chapter 312. ▪ 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: <ul style="list-style-type: none"> • Make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023. • Create at least 25 new qualifying jobs. <p>The new building or other new improvement described by paragraph (A)(ii).</p>

Glossary of Selected Terms Related to Agreements

Term	Definition
	<p>Tangible personal property:</p> <ul style="list-style-type: none"> ▪ That is not subject to a tax abatement agreement entered into by a school district under [Texas Tax Code], Chapter 312. ▪ For which a sales and use tax refund is not claimed under [Texas Tax Code], Section 151.3186. ▪ Except for new equipment described in [Texas Tax Code], Section 151.318(q) or (q-1), that is first placed in service in the new building, in the newly expanded 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.
Qualifying time period	<p>As of December 31, 2015, Texas Tax Code, Section 313.021(4), defined a qualifying time period as follows:</p> <p>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, except as provided by the following:</p> <ul style="list-style-type: none"> ▪ 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. ▪ In connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety 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.
Revenue protection payments	<p>Revenue protection payments are intended to protect a school district against any loss of maintenance and operations tax revenues as a result of an agreement. They also may include any costs that the school district incurs during the term of the agreement, including tax credits for which a school district does not receive additional state aid from the State.</p> <p>Initial payment amounts are based on estimates, but the agreements require that the payment calculation be recalculated based on the annual certified tax roll data prepared by the county appraisal district.</p>
Settle-up period	<p>Texas Tax Code, Section 313.104(B), defines settle-up period as:</p> <ul style="list-style-type: none"> ▪ The first three tax years that begin on or after the date the person's eligibility for the limitation 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 during the limitation period, ▪ 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. <p>House Bill 1470 (80th Legislature), effective June 15, 2007, amended that statute to increase the settle-up period from the first tax year after the limitation to the first three tax years after the limitation. Therefore, the settle-up period for the Port Neches-Groves Independent School District agreement audited was limited to the first year after the limitation period expired.</p>

Sources: Texas Tax Code, Chapter 313; the school districts audited; and the Comptroller's Office.

Management's Responses

Management's response from the Clyde Consolidated Independent School District is presented below.

CLYDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT



PO Box 479, 526 Shalimar Drive
Clyde Texas 79510
325-893-4222 FAX: 325-893-4024
www.clyde_esc14.net

Superintendent:
Keith Schamhorst
Assistant Superintendent/CFO:
Terry Phillips
Director of Curriculum /Special Programs:
Paula Kinslow

"Adding Value to Every Student, Everyday, Every Classroom"

Formal Management Response
Clyde Consolidated Independent School District
Report on the Audit of Major Agreements under
the Texas Economic Development Act

Phillip Stringer
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

Mr. Stringer:

Thank you for the opportunity to respond to the specific findings addressed to the Clyde Consolidated Independent School District. We welcome the review of our practices at the District. We would like to note that the agreement that was audited is beyond the limitation period. The District will make the effort to comply with the recommendations listed in the SAO report for any future agreement to the extent that they comport with requirements of statute, Texas Comptroller Rules and rules and regulations adopted by the Texas Education Agency for any future application presented to the District.

Chapter 1

School District Monitoring of Agreements Relies Primarily on Information That Businesses Report

Respectfully, we would point out that because of the project's proximity to the central office, we have been able to determine locally that the project is operating and that the employees are there, as the employees are members of our community. The wind farm itself begins across from the school district. But for the more formal review of the project, the school district does rely on the information reported from the company to determine compliance with the agreement. As a preliminary matter, the District views Chapter 313 of the Texas Tax Code and the rules adopted to implement Chapter 313 as a state program which is administered in part by the District. In order to ensure uniformity in the administration of the program, this District does not feel it is authorized to impose new obligations on the recipients of the program. Furthermore, the process of relying on "...data certified to the Comptroller by each recipient of a limitation on appraised value under this subchapter..." is set forth in Section 313.032(a) of the Texas Tax Code. In

Clyde Elementary (325)893-4788 FAX (325) 893-5642 Kim Jones, Principal	Clyde Intermediate (325) 893-2815 FAX (325) 893-3067 Jill Morphis, Principal	Clyde Junior High (325)893-5788 FAX (325)893-2134 Kenny Berry, Principal	Clyde High School (325)893-2161 FAX (325)893-2993 Gregg Wilson, Principal
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"An Equal Opportunity Employer"

CLYDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT



PO Box 479, 526 Shalimar Drive
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325-893-4222 FAX: 325-893-4024
www.clyde.esc14.net

Superintendent:
Keith Schamhorst
Assistant Superintendent/CFO:
Terry Phillips
Director of Curriculum /Special Programs:
Paula Kinslow

"Adding Value to Every Student, Everyday, Every Classroom"

adopting such provisions, the Texas Legislature created a system designed to rely upon the disclosure of information directly from the applicant for a tax limitation. The District has therefore adopted this as its method of verifying compliance with the agreements.

This is the only practical solution to determine compliance. Any information must be generated by the company. No other data point exists for the district to verify the progress of the agreement against.

The SAO also determined that prior to the Comptroller's mandated requirements regarding reporting, several years passed with no way for the District to measure the company's performance. However, the Agreement approved by the District specifically requires that the company disclose all necessary information to the appraisal district and school district to determine the company's eligibility for the limitation.

Chapter 3

Developing Agreements For Accountability and Transparency

The SAO made recommendations that the District should consider amending its existing agreement. As a preliminary note, we would point out that the Agreement Form drafted by our consultants and reviewed by the SAO was used as the template for the current required Comptroller template agreement. The terms regarding required investment amounts have remained unchanged.

1. The SAO maintains the position in its report that the applicant "agreed" to a certain level of qualifying investment beyond the minimum required investment necessary to qualify for an appraised value limitation. However, nowhere on the 2005 application form is there a commitment to a qualified investment beyond the minimum amount. The form states that the costs are "estimates." The application requests estimates.

Furthermore, the Agreement does in fact have provision related to required investment amounts. Sections 1.1, 1.2 and 1.3 of the agreement define the tax limitation amount as being \$5 Million. At the time of the agreement Tex. Tax Code §§ 313.022(b) and 313.023 required the applicant's minimum Qualified Investment to be \$5 Million. That was the minimum amount of Qualified Investment required by the Agreement. Failure to meet this investment is defined as a breach, which would result in the company losing all benefit of the value limitation agreement.

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Kim Jones, Principal

Clyde Intermediate
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FAX (325) 893-3067
Jill Morphis, Principal

Clyde Junior High
(325)893-5788
FAX (325)893-2134
Kenny Berry, Principal

Clyde High School
(325)893-2161
FAX (325)893-2993
Gregg Wilson, Principal

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CLYDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT



PO Box 479, 526 Shalimar Drive
Clyde Texas 79510
325-893-4222 FAX: 325-893-4024
www.clyde.esc14.net

Superintendent:
Keith Schamhorst
Assistant Superintendent/CFO:
Terry Phillips
Director of Curriculum /Special Programs:
Paula Kinslow

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At the time of the execution of this agreement at issue in this Audit, Comptroller's rules did not require that the applicant was bound by the number of Qualifying Jobs estimated in its application. Instead, the applicant was bound by the statutory requirements set forth at Tex. Tax Code §313.021(2)(A)(iv)(b). The statutory requirement is incorporated into the agreement at Section 6.2(b) which requires the applicant to maintain a viable presence in the district, which in conformance with the term's definition in Section 1.3, included the maintenance, over the life of the agreement of the statutorily required number of jobs.

2. All future agreements will be governed by the assignment language currently required by the Texas Comptroller's template form. However, we would point out that the assignment provisions in the agreement reviewed by the SAO did require any assignee to comply with all terms of the agreement. Therefore, there are provisions regarding required eligibility of the assignee because they are bound by the same provisions and requirements.

3. As stated above, the Applicant is required under the terms of the Agreement to Maintain a Viable Presence in the District. Annual and biennial reporting requirements are set by Comptroller's rules. The reports as posted provide sufficient information to measure compliance with all current statutory mandates and the express terms of the Agreement.

Chapter 4 Compliance Reporting

The SAO has made two recommendations

- Ensure that the annual eligibility reports and the biennial progress reports they receive contain consistent information before they submit those reports to the Comptroller's Office.
- Ensure that the market values, supplemental payments, and gross tax savings they report on their biennial cost reports are consistent with the information that their consultant uses to calculate revenue protection payments and payments in lieu of taxes.

The District has changed the practice of its consultants regarding verification of the data reported on the company forms.

Chapter 5 Processing Tax Credits

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Recommendations

Clyde Consolidated ISD should:

- Comply with its agreements related to tax credits, and direct the collector of taxes to credit the amount of the tax credits against the taxes imposed on the property covered by the agreements.
- Comply with statutory requirements to correct erroneous tax credit payments.

As noted in the SAO, Clyde CISD complied with TEA adopted practices for the issuance of tax credits. TEA now requires all tax credits to be issued on tax bills. The project is not eligible for any future tax credits, and tax credits are not available to any project that would apply now. Therefore, the District will make no change in the tax credit process.

Chapter 6

Disclosing Conflicts of Interest

The District does require that Board members, the Superintendent and Business Manager/CFO annually disclose whether or not a conflict exists with any vendor as part of the third party independent audit of the school district.

Chapter 7

Administrative Processes

Recommendations

Clyde Consolidated ISD should consider developing a process to determine how to correct errors identified in payments from a business with which it has an agreement.

As noted, the District and Consultants rely on data provided by the local appraisal district, tax office, and Applicant. The initial revenue loss and benefit calculations are delivered to both the District and Company prior to November of each year, three months in advance of any payment being due to the District. The District reviews the letter for accuracy of the school district data (student counts, local certified values, tax rates, and Chapter 313 project values). The Applicant also has the same initial time period to verify and review the data and calculations. If there are any appeals or adjustments to the final taxable values after this time, both the Applicant and District have the ability to amend the third party calculations under Section 3.11 of the

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Agreement. The District and Consultant need to be notified by either the Applicant and/or Appraisal District of any adjustment to the final value.

There should be a periodic review of Chapter 313 taxable values performed by the District, its Consultants, Tax Offices and Appraisal Districts to verify that no adjustments have been made to the values provided to the District in September of each year so that, if necessary, settle-up revenue loss and benefit calculations can be performed.

Submitted by:

Terry Phillips
Assistant Superintendent / CFO

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Management's response from the Port Neches-Groves Independent School District is presented below.



PORT NECHES-GROVES
INDEPENDENT SCHOOL DISTRICT
620 Avenue C
Port Neches, Texas 77651
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E-mail rcavness@pngisd.org

Office of Superintendent
Dr. Rodney D. Cavness

October 3, 2016

Mr. Philip Stringer
Project Manager
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

Re: Response to SAO Recommendations

Dear Mr. Stringer:

The following are responses from Port Neches-Groves Independent School District ("PNGISD") to the SAO Recommendations concerning the management of the three school districts reviewed under the audit of Selected Major Agreements Under the Texas Economic Development Act.

SAO Recommendation

The three audited school districts should consider amending the audited agreements to include:

- Information regarding the ability of the businesses to locate in or relocate to another state or another region of Texas.
- The qualified investments to be made during the qualifying time period and the anticipated total investments for the projects.
- The number of qualifying jobs to be created, the wages to be paid for each job, and the types of employee benefits the businesses would offer.

District Management's Response: *PNGISD management agrees that the recommendations made by the SAO can be beneficial to both the school district and the State of Texas. However, the agreement between BASF TOTAL Petrochemicals, LLC and PNGISD expired at the end of the 2015 Tax Year. Therefore, it is not possible to amend this particular agreement. PNGISD is not currently in the process of negotiating any new contracts, but the recommendations will be considered as a part of any potential future Chapter 313 contract negotiations. It should be noted that school districts are bound by the requirements set forth by the State Comptroller in regard to all Chapter 313 applications, agreements, reporting, and oversight. The Comptroller requirements*

associated with Chapter 313 agreements have changed significantly since this particular agreement was negotiated and entered in 2002.

SAO Recommendation

The three school districts audited should:

- Ensure that the annual eligibility reports and the biennial progress reports they receive contain consistent information before they submit those reports to the Comptroller's Office.
- Ensure that the market values, supplemental payments, and gross tax savings they report on their biennial cost reports are consistent with the information that their consultant uses to calculate revenue protection payments and payments in lieu of taxes.

District Management's Response: *The PNGISD management agrees that data integrity is of the utmost importance, and it is critical for district administration to be significantly engaged in ensuring that the data submitted to the Comptroller's Office is reported in an accurate and timely manner. Beginning with the May 2016 reporting cycle, PNGISD engaged a different consulting group to serve as the independent third-party required for Chapter 313 reporting. The District determined that while the original consulting group had represented the District very well, it would be in the best interest of the District and the companies associated with the Chapter 313 agreements to work with a different consultant similar to the approach taken when school districts and other governmental entities alternate independent financial auditors.*

Additionally, PNGISD has joined with other school districts across the State of Texas that are engaged in Chapter 313 agreements and have collectively began a process to work more cohesively through the formation of a collective coalition. A primary aim of the coalition is to provide training to member school districts related to the oversight and data integrity associated with Chapter 313 agreements. The coalition of school districts is committed to completing the first round of training for superintendents and CFOs prior to the beginning of the next reporting cycle, which will begin in May of 2017.

SAO Recommendation

In processing future tax credits, the three school districts audited should:

- Comply with statute related to tax credits, and direct the collector of taxes to apply tax credits against the future property taxes imposed on the property subject to an agreement.
- Comply with statutory requirements to correct erroneous tax credit payments.

District Management's Response: *PNGISD management agrees that Chapter 313 tax credits should be applied according to statute. PNGISD has directed the Jefferson County Tax Assessor/Collector that beginning with the 2016 tax year, tax credit payments are to be applied to future property tax bills as opposed to the prior practice of the school district reimbursing the company for the tax credit.*

It should also be noted that beginning with the May 2016 reporting cycle, PNGISD engaged a different consulting group to serve as the independent third-party required for Chapter 313 reporting. The District determined that while the original consulting group had represented the District very well, it would be in the best interest of the school district and the companies associated with the Chapter 313 agreements to work with a different consultant similar to the approach taken when school districts and other governmental entities alternate independent financial auditors.

SAO Recommendation:

- Port Neches-Groves ISD and BASF TOTAL Petrochemicals, LLC should ensure that consultants and school board members involved with agreements comply with conflict of interest disclosure requirements.
- The school districts audited should consider including a requirement in their conflict of interest policies requiring board members, district employees, and vendors to complete conflict of interest disclosure forms on an annual basis to confirm whether conflicts exist.

District Management's Response: *PNGISD management agrees with the recommendation that consultants and school board members involved in Chapter 313 agreements comply with Conflict of Interest disclosure requirements. PNGISD Administration is in the process of working with their general counsel and the Texas Association of School Boards Policy Services to review and revise Policy BBFA (LOCAL) and BBFA (EXHIBIT) related to Conflict of Interest disclosures. The revised policy will be presented to the PNG Board of Trustees no later than January 2017.*

SAO Recommendation:

The three school districts audited should consider developing and implementing a process to review and verify that the consultant's calculations for revenue protection payments and payments in lieu of taxes are accurate.

District Management's Response: *PNGISD management agrees that data integrity is of the utmost importance and that it is critical for district administration to be significantly engaged in ensuring that revenue protection payments and payments in lieu of taxes are accurate. Beginning with the May 2016 reporting cycle, PNGISD engaged a different consulting group to serve as the independent third-party required for Chapter 313 reporting. The District determined that while the original consulting group had represented the District very well, it would be in the best interest of the school district*

and the companies associated with the Chapter 313 agreements to work with a different consultant similar to the approach taken when school districts and other governmental entities alternate independent financial auditors.

Additionally, PNGISD has joined with other school districts across the State of Texas that are engaged in Chapter 313 agreements and have collectively began a process to work more cohesively through the formation of a collective coalition. The primary aim of the coalition is to provide training to member school districts related to the oversight and data integrity associated with Chapter 313 agreements. The coalition of school districts is committed to completing the first round of training for superintendents and CFOs prior to the beginning of the next reporting cycle, which will begin in May of 2017.

Please do not hesitate to contact me should you have any additional questions. I have greatly appreciated the professionalism of the SAO team as they performed this review.

Sincerely,



Dr. Rodney Cavness, Superintendent

Management's response from the Sabine Pass Independent School District is presented below.

Sabine Pass Independent School District

P. O. Box 1148 Sabine Pass, Texas 77655 (409) 971-2321 Fax (409) 971-2120



Formal Management Response **Sabine Pass Independent School District** Report on the Audit of Major Agreements under the Texas Economic Development Act

Phillip Stringer
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

Mr. Stringer:

Thank you for the opportunity to respond to the specific findings addressed to the Sabine Pass Independent School District. We welcome the review of our practices at the District. The District will make the effort to comply with the recommendations listed in the SAO report for any future agreement to the extent that they comport with requirements of statute, Texas Comptroller Rules and rules and regulations adopted by the Texas Education Agency for any future application presented to the District.

Chapter 1

School District Monitoring of Agreements Relies Primarily on Information That Businesses Report

The school district does rely on the information reported from the company to determine compliance with the agreement. As a preliminary matter, the District views Chapter 313 of the Texas Tax Code and the rules adopted to implement Chapter 313 as a state program which is administered in part by the District. In order to ensure uniformity in the administration of the program, this District does not feel it is authorized to impose new obligations on the recipients of the program. Furthermore, the process of relying on "...data certified to the Comptroller by each recipient of a limitation on appraised value under this subchapter..." is set forth in Section 313.032(a) of the Texas Tax Code. In adopting such provisions, the Texas Legislature created a system designed to rely upon the disclosure of information directly from the applicant for a tax limitation. The District has therefore adopted this as its method of verifying compliance with the agreements.

This is the only practical solution to determine compliance. Any information must be generated by the company. No other data point exists for the district to verify the progress of the agreement against.

Chapter 3

Developing Agreements For Accountability and Transparency

The SAO made recommendations that the District should consider amending its existing agreement. As a preliminary note, we would point out that the Agreement Form drafted by our consultants and reviewed by the SAO was used as the template for the current required Comptroller template agreement. The terms regarding required investment amounts have remained unchanged.

1. The SAO maintains the position in its report that the applicant “committed” to a certain level of qualifying investment beyond the minimum required investment necessary to qualify for an appraised value limitation. However, nowhere on the 2006 application form is there a commitment to a qualified investment beyond the minimum amount. The form states that the costs are “estimates.” The application requests estimates.

Furthermore, the Agreement does in fact have provision related to required investment amounts. Sections 1.1, 1.2 and 1.3 of the agreement define the tax limitation amount as being \$5 Million. At the time of the agreement Tex. Tax Code §§ 313.022(b) and 313.023 required the applicant’s minimum Qualified Investment to be \$30 Million. That was the minimum amount of Qualified Investment required by the Agreement. Failure to meet this investment is defined as a breach, which would result in the company losing all benefit of the value limitation agreement.

At the time of the execution of this agreement at issue in this Audit, Comptroller’s rules did not require that the applicant was bound by the number of Qualifying Jobs estimated in its application. Instead, the applicant was bound by the statutory requirements set forth at Tex. Tax Code §313.021(2)(A)(iv)(b). The statutory requirement is incorporated into the agreement at Section 6.2(b) which requires the applicant to maintain a viable presence in the district, which in conformance with the term’s definition in Section 1.3, included the maintenance, over the life of the agreement of the statutorily required number of jobs.

2. All future agreements will be governed by the assignment language currently required by the Texas Comptroller’s template form. However, we would point out that the assignment provisions in the agreement reviewed by the SAO did require the written approval of the assignment of the agreement, and any assignee to comply with all terms of the agreement. Therefore, there are provisions regarding required eligibility of the assignee because they are bound by the same provisions and requirements.

3. As stated above, the Applicant is required under the terms of the Agreement to Maintain a Viable Presence in the District. Annual and biennial reporting requirements are set by Comptroller’s rules. The reports as posted provide sufficient information to measure compliance with all current statutory mandates and the express terms of the Agreement.

Chapter 4 Compliance Reporting

The SAO has made two recommendations

- Ensure that the annual eligibility reports and the biennial progress reports they receive contain consistent information before they submit those reports to the Comptroller's Office.
- Ensure that the market values, supplemental payments, and gross tax savings they report on their biennial cost reports are consistent with the information that their consultant uses to calculate revenue protection payments and payments in lieu of taxes.

The District has changed the practice of its consultants regarding verification of the data reported on the company forms. However, as we pointed out during the SAO visit, the reports reviewed by the SAO from all sources were completed at different times. It is an unfair comparison to find that the values do not match without considering that the reports were completed a full six months after the CAD has issued its notice to the Comptroller about value lost and/or before a value appeal by the company. And although inconsistencies were noted by the SAO regarding jobs reported by the company, such inconsistencies can be explained by the school district consultants defining for the company as what jobs actually met the definition of qualifying jobs.

Chapter 5 Processing Tax Credits

Recommendations

Sabine Pass ISD should:

- Comply with its agreements related to tax credits, and direct the collector of taxes to credit the amount of the tax credits against the taxes imposed on the property covered by the agreements.
- Comply with statutory requirements to correct erroneous tax credit payments.

As noted in the SAO, Sabine Pass ISD complied with TEA adopted practices for the issuance of tax credits. TEA now requires all tax credits to be issued on tax bills. The project is not eligible for any future tax credits, and tax credits are not available to any project that would apply now. Therefore, the District will make no change in the tax credit process.

Chapter 6 Disclosing Conflicts of Interest

The District does require that Board members, the Superintendent and Business Manager/CFO annually disclose whether or not a conflict exists with any vendor as part of the third party independent audit of the school district.

Chapter 7 Administrative Processes

Recommendations

Sabine Pass ISD should consider developing a process to determine how to correct errors identified in payments from a business with which it has an agreement.

The SAO finding that the district reported a total certified value (not project value) of 51% higher than Jefferson County ISD is a potential timing issue. The revenue loss calculations occur in September through November of each year and do not take into account any future value appeals by taxpayers in the district. The total certified values used during the revenue loss calculations are the best estimates of certified values at that point in time. That being said, the Chapter 313 project market value is correct and did not change. The project value was isolated to determine any state aid or local funding loss. Because total certified values changed at a future time due to appeals or protests by other taxpayers does not necessarily mean there is an impact on the revenue loss or supplemental payments calculated by November 1 of each year for that specific project.

As noted, the District and Consultants rely on data provided by the local appraisal district, tax office, and Applicant. The initial revenue loss and benefit calculations are delivered to both the District and Company prior to November of each year, three months in advance of any payment being due to the District. The District reviews the letter for accuracy of the school district data (student counts, local certified values, tax rates, and Chapter 313 project values). The Applicant also has the same initial time period to verify and review the data and calculations. If there are any appeals or adjustments to the final taxable values after this time, both the Applicant and District have the ability to amend the third party calculations under Section 3.9 of the Agreement. The District and Consultant need to be notified by either the Applicant and/or Appraisal District of any adjustment to the final value.

There should be a periodic review of Chapter 313 taxable values performed by the District, its Consultants, Tax Offices and Appraisal Districts to verify that no adjustments have been made to the values provided to the District in September of each year so that, if necessary, settle-up revenue loss and benefit calculations can be performed.

Respectfully,



Kristi Heid
Superintendent
Sabine Pass School

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The Honorable Joe Straus III, Speaker of the House, Joint Chair
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The Honorable Greg Abbott, Governor

Office of the Comptroller of Public Accounts

The Honorable Glenn Hegar, Comptroller of Public Accounts

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