



An Audit Report on

# **Selected Major Agreements Under the Texas Economic Development Act**

July 2017

Report No. 17-043



# Selected Major Agreements Under the Texas Economic Development Act

## Overall Conclusion

In response to amendments the 83rd Legislature made to Texas Tax Code, Chapter 313, the Office of the Comptroller of Public Accounts (**Comptroller's Office**) developed processes:

- To determine whether an application for an agreement for a limitation on the appraised value of properties (agreement) met the requirements for a certificate for limitation of appraised value to be issued.
- For businesses to report on their compliance with job-creation requirements.

Auditors identified discrepancies in the biennial report regarding agreements that the **Comptroller's Office published in January 2017**. For example, that report understated the total fiscal effect of agreements on the state and local governments through 2015 by \$170,013,692. The **Comptroller's Office should** strengthen its review of the calculations it performs to compile that report. There are no **statutory requirements for the Comptroller's Office to verify information related to agreements, and the Comptroller's Office did not perform verification.**

### Results of Audits of Three Agreements

**The State Auditor's Office audited three agreements at three independent school districts (ISDs) and determined the following:**

- Corrigan-Camden ISD complied with Texas Tax Code, Chapter 313, in its execution and administration of the audited agreement.
- Port Arthur ISD and Roscoe Collegiate ISD generally complied with Texas Tax Code, Chapter 313, in their execution and administration of the audited agreements.

(See text box for additional information on the audited agreements.)

### Background Information on the Audited Agreements

#### Corrigan-Camden ISD Agreement:

- Businesses associated with the agreement: Martco Limited Partnership and Roy O. Martin LMB Mgmt, LLC; the agreement was later assigned to Corrigan OSB LLC.
- Type of business: Lumber.
- Tax year 2016 appraised value: \$13,849,353.
- Appraisal limitation for the maintenance and operation portion of property taxes the ISD can impose: \$20,000,000.
- Term of Agreement: December 9, 2014, through December 31, 2031.

#### Port Arthur ISD Agreement:

- Business associated with the agreement: Motiva Enterprises, LLC.
- Type of business: Petroleum refinery expansion.
- Tax year 2016 appraised value: \$3,473,624,500.
- Appraisal limitation for the maintenance and operation portion of the property taxes the ISD can impose: \$30,000,000.
- Term of agreement: January 1, 2008, through December 31, 2020.

#### Roscoe Collegiate ISD Agreement:

- Business associated with the agreement: Airtricity Champion Wind Farm, LLC, which later became E.ON Climate and Renewables North America, Inc.
- Type of business: Wind farm.
- Tax year 2016 appraised value: \$239,229,580.
- Appraisal limitation for the maintenance and operation portion of property taxes the ISD can impose: \$10,000,000.
- Term of agreement: January 1, 2008, through December 31, 2020.

See Appendix 3 for additional information on the audited agreements and Appendices 4 and 5 for general information regarding agreements.

Sources: Appraisal districts for Polk, Jefferson, and Nolan counties; Corrigan-Camden ISD; Port Arthur ISD; and Roscoe Collegiate ISD.

It is important to note that the agreement audited at Corrigan-Camden ISD was relatively newer than the other agreements audited and, therefore, it was subject to the new requirements the 83rd Legislature established. Because that agreement was in the qualifying time period for tax years 2015 and 2016 and the appraisal limitation period commenced on January 1, 2017, there was limited documentation to audit related to Corrigan-Camden ISD's oversight and monitoring of that agreement. Therefore, the results of the audit of the agreement at Corrigan-Camden ISD are discussed separately in Chapter 2 of this report; the results of the audit of agreements at Port Arthur ISD and Roscoe Collegiate ISD are discussed in Chapter 3 of this report.

To determine whether businesses with agreements complied with Texas Tax Code, **Chapter 313, the three ISDs relied primarily on businesses' certifications of their annual eligibility reports and the biennial progress reports to confirm (1) the businesses' capital investment and (2) the number of qualifying jobs the businesses had created.**

In addition, although the audited ISDs had conflict of interest policies that complied with statute, they should strengthen certain aspects of those policies. The policies did not require the filing of disclosure statements on a regular basis or affirmations that conflicts did not exist on an annual basis; the policies also were not specific to agreements. Roscoe Collegiate ISD also did not always comply with its conflict of interest policies. Auditors identified two instances in which conflicts of interest were present, however individuals did not complete a disclosure form or did not complete that form in a timely manner.

For tax year 2016, Port Arthur ISD and Roscoe Collegiate ISD complied with statutory requirements and directed the tax assessor-collector to apply the applicable tax credits to the property tax bills for the qualified property. However, at the direction of the Texas Education Agency, from 2011 through 2015 Port Arthur ISD and Roscoe Collegiate ISD paid tax credits directly to the businesses associated with the audited agreements. Port Arthur ISD and Roscoe Collegiate ISD also did not (1) review calculations of revenue protection payments and payments in lieu of taxes and (2) ensure that businesses reported consistent information on annual and biennial reports.

Auditors also communicated other, less significant issues separately in writing to **the ISDs audited and the Comptroller's Office.**

Most of the issues discussed in this report are consistent with issues the State Auditor's Office previously identified in November 2014, August 2015, and October 2016.<sup>1</sup>

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<sup>1</sup> See *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014); *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015); and *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 17-009, October 2016).

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 and Related Issue Ratings		
Chapter	Title	Issue Rating <sup>a</sup>
1	<b>The Comptroller’s Office Developed Processes to Address Statutory</b> Requirements Related to Agreements, But It Should Strengthen Certain Aspects of Those Processes	Medium
2	Corrigan-Camden ISD Complied with Statute in Its Execution and Administration of the Audited Agreement	Medium
3	Port Arthur ISD and Roscoe Collegiate ISD Generally Complied with Statute in Their Execution and Administration of the Audited Agreements	Medium

<sup>a</sup> A chapter 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.

A chapter 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.

A chapter 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.

A chapter 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.

## ***Summary of Management’s Response***

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. **The Comptroller’s Office and Corrigan-Camden ISD** agreed with the recommendations addressed to them. However, Port Arthur ISD and Roscoe Collegiate ISD 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 whether new processes established by **the Comptroller's Office were sufficient to address new requirements for the Comptroller's Office established by** amendments the 83rd Legislature made to Texas Tax Code, Chapter 313.

The scope of the audit covered selected applications and agreements processed from January 1, 2002, through December 31, 2016. The scope for the audit work **completed at the Comptroller's Office covered new processes related to** agreements established from January 1, 2014, through December 31, 2016.

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# Detailed Results

## Introduction

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In 2001, the 77th Legislature enacted the Texas Economic Development Act (Texas Tax Code, Chapter 313), which permitted independent school districts (ISDs) to offer eight-year limitations on the appraised value of a property for the maintenance and operations portion of the ISDs' property taxes (the properties remain fully taxable for the purposes of any ISD debt service tax). Texas Education Code, Section 42.2515, also entitles ISDs to receive additional state aid each tax year from the Texas Education Agency for tax credits that are associated with the appraisal limitation agreements (agreements).

The 83rd Legislature amended Texas Tax Code, Chapter 313, and new requirements were applicable to applications for agreements completed on or after January 1, 2014. The new requirements:

- Enabled ISDs to extend the appraisal limitation time period from an 8-year period to a 10-year period beginning on the January 1 immediately following the application date, the qualifying time period, or the start of commercial operations at the project site.
- Eliminated the ability of businesses to receive tax credits for all applications for agreements completed on or after January 1, 2014.
- Extended the time period for a property owner to maintain a viable presence in the ISD from three years to five years after the date the limitation on appraised value of the owner's property expires.

The new requirements also established additional monitoring and reporting requirements for the Office of the Comptroller of Public Accounts (Comptroller's Office). (It is important to note that the additional requirements for the Comptroller's Office may not be applicable to agreements that were executed prior to January 1, 2014.) Specifically, the Comptroller's Office was required to:

- Issue a certificate for a limitation on appraised value of a property or an explanation for the decision not to issue a certificate (see Appendix 5 for additional information on those certificates).
- Conduct an annual review to determine whether businesses with agreements have met the applicable job-creation requirements, and establish penalties for failure to remedy a finding of noncompliance.

- Report certain aggregate totals for all of the agreements in a biennial report, including the total number of jobs created; the total effect on personal income; the total amount of investment in the state; the total taxable value of property on the tax rolls in the state (including property for which the limitation period had expired); the total value of property not on the tax rolls in the state as a result of agreements entered into under Texas Tax Code, Chapter 313; and the total fiscal effect on the state and local governments.

In January 2014, the Comptroller's Office developed a template for the agreements between ISDs and businesses. One agreement the State Auditor's Office audited was subject to the new requirements discussed above; therefore, the ISD used that template (see Chapter 2). The other two agreements audited were not subject to the new requirements (see Chapter 3). As of December 31, 2016, there were 355 executed agreements between 167 school districts and 239 businesses. Of those 355 executed agreements, 102 were executed after January 1, 2014, and were subject to the new requirements discussed above.

In January 2017, the Comptroller's Office reported that, as of May 2016, businesses with agreements had projected an investment of approximately \$145.7 billion in the state and committed to create 6,562 qualifying jobs over the life of their agreements.

County appraisal districts reported to the Comptroller's Office that, from tax year 2005 through tax year 2016, an estimated \$1.76 billion in property tax revenue was not collected as a result of agreements.<sup>2</sup> As of December 31, 2016, businesses associated with 253 executed agreements may be entitled to receive an estimated \$413 million in tax credits from tax year 2006 through 2031 (those agreements were executed prior to the elimination of tax credits).

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<sup>2</sup> The first possible year for the appraisal limitation period for agreements subject to the new requirements discussed above is 2017; therefore, the estimated property tax revenue not collected discussed above is attributable to all agreements executed prior to January 1, 2014.

## **The Comptroller's Office Developed Processes to Address Statutory Requirements Related to Agreements, But It Should Strengthen Certain Aspects of Those Processes**

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Chapter 1  
Rating:  
Medium<sup>3</sup>

The Comptroller's Office established processes to address new requirements for agreements that the 83rd Legislature established. Those new requirements amended Texas Tax Code, Chapter 313. However, it should strengthen certain aspects of those processes.

**The Comptroller's Office developed processes related to applications for agreements.**

Texas Tax Code, Section 313.025, required the Comptroller's Office to issue a certificate for a limitation on appraised value (certificate) or an explanation for the decision not to issue a certificate for all applications for agreements completed on or after January 1, 2014. In addition, Texas Tax Code, Section 313.026, required the Comptroller's Office to (1) determine whether a limitation on appraised value is a determining factor in an applicant's decision to invest capital and construct its project in Texas and (2) complete a 25-year fiscal impact evaluation when determining whether to issue a certificate (see Appendix 5 for additional information on certificates).

The Comptroller's Office developed a process to comply with the requirements discussed above, and it implemented that process for all 17 applications tested. The Comptroller's Office also included the results of its analyses as support in the certificate packets and certificate denial packets it created, and those analyses reasonably supported its decisions to issue or deny a certificate.

**The Comptroller's Office** developed processes for reporting related to agreements, but it should strengthen certain aspects of those processes.

Biennial report preparation. As required by Texas Tax Code, Section 313.032, the Comptroller's Office compiled its biennial report on agreements using information that ISDs and businesses reported. However, the Comptroller's Office should strengthen its review of the calculations it performs to prepare the biennial report. The Comptroller's Office's January 2017 biennial report understated the total fiscal effect of agreements on the state and local governments through 2015 by \$170,013,692 (19 percent). That error occurred because the Comptroller's Office's calculation of the total amount of maintenance and operations taxes through 2015 was understated by that amount.

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<sup>3</sup> Chapter 1 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.

Process for businesses to report jobs created. As required by Texas Tax Code, Section 313.033, the Comptroller's Office developed a process for businesses with agreements to report their compliance with the job-creation requirements in their agreements (see Appendix 5 for more information on job-creation compliance reports).

However, businesses with agreements did not always submit job-creation information or did not always submit that information in a timely manner, and the Comptroller's Office did not always follow up. Specifically:

- Three (75 percent) of the 4 businesses tested that were required to submit job-creation reports in 2015 did not submit those reports.
- Two (15 percent) of the 13 businesses selected for testing that were required to submit job-creation reports in 2016 did not submit those reports.
- Five (38 percent) of the 13 businesses tested submitted job-creation reports for 2016 between 9 and 211 days late.

An insufficient follow-up process increases the risk that businesses may not comply with job-creation requirements.

**The Comptroller's Office had adequate information security controls, but it** should strengthen certain information technology controls related to agreements.

The Comptroller's Office's information technology security policies were adequate and sufficiently detailed to provide guidance for the overall direction and implementation of information technology security at the Comptroller's Office.

However, the Comptroller's Office did not adequately restrict access to the network folder where it maintained key spreadsheets and data related to agreements. Auditors identified 45 users with inappropriate access to that folder. Inappropriate access increases the risk of the loss of data or unauthorized modification to data and disclosure of sensitive or confidential information. After auditors notified the Comptroller's Office about the inappropriate access, the Comptroller's Office removed access for those 45 users.

Statute does not require independent verification of the information that businesses and ISDs submit.

For some applications, the Comptroller's Office relied solely on information the applicants provided to make the determination of whether a limitation on appraised value was a determining factor for an applicant to locate its business in Texas. There are no statutory requirements for an applicant to

specify a competing location outside of Texas or specific requirements that the Comptroller's Office must follow when making its determinations. However, not requiring information on specific competing locations, and not verifying that information, reduces the assurance that limitation on appraised value was a determining factor.

Additionally, the Comptroller's Office did not verify the accuracy of the information it used to compile the biennial report or the job-creation information that the businesses reported, and there are no statutory requirements for the Comptroller's Office to do so. Not verifying information that businesses and ISDs report increases the risk that the information in the biennial report will be inaccurate and businesses may not comply with the job-creation requirements in their agreements.

The Comptroller's Office asserted that it had developed a process to verify the accuracy of job-creation information that businesses report, but that it had not implemented that process.

#### Recommendations

The Comptroller's Office should:

- Strengthen its review of the calculations it performs to prepare its biennial reports on agreements.
- Implement a process to ensure that businesses submit all required job-creation information in a timely manner.
- Conduct periodic access reviews to ensure that access to the network folder where it maintains key spreadsheets and data related to the agreements is appropriate.
- Implement the process it asserted it had developed to verify the job-creation information that businesses with agreements report, and consider expanding that process to verify other information that it uses to compile biennial reports on agreements.

#### Management's Response

***Recommendation #1:*** *The Comptroller's Office should strengthen its review of the calculations it performs to prepare its biennial reports on agreements.*

**Management Response to Recommendation #1:**

*Management concurs with the recommendation to strengthen our review of the calculations performed to prepare the biennial report on agreements and we have implemented a process to do so.*

*The Data Analysis and Transparency (DAT) team has reviewed all forms, spreadsheets and formulas used to calculate data for our biennial report on agreements. After an extensive review of all calculations and source document data, the Comptroller's office revised the biennial report and posted the revised document to the Comptroller's website. We will distribute the revised report as required per Tax Code 313.032.*

***Responsible Party:***

*Director of Data Analysis and Transparency*

***Expected Implementation Date:***

*August 31, 2017*

**Recommendation #2:** *The Comptroller's Office should implement a process to ensure that businesses submit all required job-creation information in a timely manner.*

**Management Response to Recommendation #2:**

*Management concurs with the recommendation and has implemented a process to ensure that all businesses that are required to submit job-creation information do so in a timely manner.*

*DAT has strengthened the follow-up process to let applicants know when forms are due and when they are out of compliance with this requirement. DAT has also developed a tracking system to record which companies are required to submit the form and when, if ever, it was submitted.*

***Responsible Party:***

*Director of Data Analysis and Transparency*

***Expected Implementation Date:***

*August 31, 2017*

**Recommendation #3:** *The Comptroller's Office should conduct periodic access reviews to ensure that access to the network folder where it maintains key spreadsheets and data related to the agreements is appropriate.*

**Management Response to Recommendation #3:**

*Management concurs with the recommendation and will conduct periodic reviews to ensure that access to the network folder where we maintain key spreadsheets and data related to the agreements is appropriate.*

*As noted in the report, DAT removed access for those individuals who had been determined to have inappropriate access, as it was not related to an essential function of their daily responsibilities. DAT will work annually with the Information Technology (IT) division, in January or as soon as practical, to review all individuals with access to the network folder for appropriateness.*

**Responsible Party:**

*Director of Data Analysis and Transparency*

**Expected Implementation Date:**

*August 31, 2017*

**Recommendation #4:** *The Comptroller's Office should implement the process it asserted it had developed to verify the job-creation information that businesses with agreements report, and consider expanding that process to verify other information that it uses to compile biennial reports on agreements.*

**Management Response to Recommendation #4:**

*Management concurs with the recommendation to implement the process developed to verify job-creation information that businesses with agreements report.*

*The Comptroller's office has implemented a process to verify job-creation information required by Tax Code Section 313.0276 that businesses with agreements report to the Comptroller. The Comptroller's Audit Headquarters Division reviews reported data to ensure compliance with statutory reporting requirements and in accordance with standard auditing practices.*

*The Comptroller's office will consider verifying other information that it uses to compile biennial reports on agreements as resources become available.*

**Responsible Party:**

*Director of Data Analysis and Transparency*

***Expected Implementation Date:***

*August 31, 2017*

## Corrigan-Camden ISD Complied with Statute in Its Execution and Administration of the Audited Agreement

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Chapter 2  
Rating:  
Medium <sup>4</sup>

It is important to note that the agreement audited at Corrigan-Camden ISD was subject to the new requirements that the 83rd Legislature established in Texas Tax Code, Chapter 313 (see the Introduction section of this report for additional information on those new requirements). In addition, the qualifying time period for the agreement was tax years 2015 and 2016, and the appraisal limitation period for the agreement commenced on January 1, 2017. Therefore, auditors reviewed limited documentation related to the oversight and monitoring of the agreement.

### Summary of the Corrigan-Camden ISD Agreement Audited

- Businesses associated with the agreement: Martco Limited Partnership and Roy O. Martin LMB Mgmt, LLC; the agreement was later assigned to Corrigan OSB LLC.
- Type of business: Lumber.
- Tax year 2016 appraised value: \$13,849,353.
- Appraisal limitation for the maintenance and operation portion of property taxes the ISD can impose: \$20,000,000.
- Term of agreement: December 9, 2014, through December 31, 2031.

Sources: Appraisal district for Polk County and Corrigan-Camden ISD.

Corrigan-Camden ISD complied with statute in its execution and administration of the audited agreement (see text box for a summary of the audited agreement and Appendix 3 for additional information on the audited agreement). The business associated with the agreement certified that it complied with certain requirements of Texas Tax Code, Chapter 313, and Corrigan-Camden ISD accepted that certification.

Corrigan-Camden ISD's oversight and monitoring of the agreement relied primarily on information that the business certified in its required reports.

Corrigan-Camden ISD's monitoring and oversight of the agreement relied primarily on information that the business certified on annual eligibility reports and a biennial progress report. (See Appendix 5 for additional information on required reports.)

The business reported a total qualified investment of \$58,197,777 and a total of 11 qualified jobs created on its 2016 biennial progress report.

Corrigan-Camden ISD hired a consultant to assist with administration of the agreement, including addressing reporting requirements, compiling information that the business reported, and performing annual calculations of revenue protection payments and payments in lieu of taxes that the agreement required.

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<sup>4</sup> Chapter 2 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 the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Corrigan-Camden ISD submitted all biennial cost data reports related to the agreement to the Comptroller's Office, as Title 34, Texas Administrative Code, Section 9.1057, required.

Corrigan-Camden ISD documented its process for considering the application for the agreement.

Corrigan-Camden ISD documented its determination of how the agreement would comply with the purpose and intent of Texas Tax Code, Chapter 313.

To make that determination, Corrigan-Camden ISD relied primarily on its consultant to verify the certified information that the business provided in its original and amended applications for the agreement. Additionally, Corrigan-Camden ISD considered information that the Comptroller's Office provided,

including (1) an economic impact analysis to determine the potential long-term economic impact to the state and (2) a certificate for a limitation on appraised value required by Texas Tax Code, Chapter 313. (See text box for additional details and Appendix 5 for additional information on those certificates).

Texas Tax Code, Section 313.025(f), states that an ISD 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 ISD and the State.

Application for Limitation of  
Appraised Value

Martco Limited Partnership and Roy O. Martin LMB Mgmt, LLC filed its original application to the Corrigan-Camden ISD school board on June 11, 2014. The business subsequently withdrew the application and resubmitted an application on July 21, 2014, to include previously omitted documentation.

Corrigan-Camden ISD submitted the initial and resubmitted applications to the **Comptroller's Office**, as required by Texas Tax Code, Section 313.025(b). On October 30, 2014, the **Comptroller's Office issued a certificate for a limitation on appraised value.** (See Appendix 5 for information on those certificates).

The Corrigan-Camden ISD school board issued its findings related to the effect of the appraisal limitation on Corrigan-Camden ISD, as required by Texas Tax Code, Section 313.025(e), and approved the agreement on December 9, 2014.

**Sources: The Comptroller's Office and Corrigan-Camden ISD.**

Corrigan-Camden ISD should strengthen certain controls related to conflicts of interest.

Corrigan-Camden ISD's conflict of interest policies included all requirements in Texas Local Government Code, Chapters 171 and 176.

However, the conflict of interest policies did not require the filing of disclosure statements on a regular basis or annual affirmations that conflicts did not exist (see text box for additional information on disclosure

statements). Although regular filing and annual affirmations are not required by statute, doing so would reduce the risk that a conflict of interest could exist but is not disclosed. Additionally, the policies were not specific to agreements. Having conflict of interest policies that are specific to agreements would increase the overall accountability and transparency associated with agreements. That issue was consistent with conflict of interest issues that the State Auditor's Office has previously reported at other ISDs.<sup>5</sup>

In addition, Corrigan-Camden ISD did not always ensure that its school board members submitted annual conflict of interest questionnaires as required by its policies (see text box for additional information on conflict of interest questionnaires).

Disclosure Statements and  
Conflict of Interest Questionnaires

Disclosure statements are statements that individuals complete when they become aware of a conflict of interest with an ISD's vendor.

Conflict of interest questionnaires are questionnaires that school board members complete on an annual basis for the preparation of an ISD's annual financial management report. The questionnaires cover any individual or related party interest in school-specific ISD transactions for the prior year.

Sources: Texas Local Government Code, Chapter 176, and Corrigan-Camden ISD.

The agreement audited at Corrigan-Camden ISD included all provisions required by statute.

Corrigan-Camden ISD used the Comptroller's Office agreement template (form 50-286) to execute the audited agreement. Therefore, the audited agreement included all provisions required by Texas Tax Code, Section 313.027. In addition, the Corrigan-Camden ISD school board approved the agreement, as Texas Tax Code, Section 313.027, required.

Corrigan-Camden ISD also complied with the Texas Administrative Code and the terms of the agreement when it executed an amended agreement in July 2016 to assign the agreement to a subsidiary of the business that was the original party to the agreement. The Corrigan-Camden ISD school board approved the amended agreement, as Texas Tax Code, Section 313.027, required.

<sup>5</sup> See *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014); *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015); and *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 17-009, October 2016).

Corrigan-Camden ISD collected required payments in lieu of taxes.

Corrigan-Camden ISD ensured that its consultant accurately invoiced the business associated with the audited agreement for payments in lieu of taxes. The annual payment in lieu of taxes amount was established in compliance with Texas Tax Code, Section 313.027. As of January 2017, Corrigan-Camden ISD had collected a total of \$276,000 from payments in lieu of taxes.

As of December 31, 2016, Corrigan-Camden ISD had not collected any revenue protection payments from the business associated with the audited agreement because the agreement was still within the qualifying time period for tax years 2015 and 2016. The appraisal limitation period for the agreement commenced on January 1, 2017, and Corrigan-Camden ISD anticipated sending an invoice for the first revenue protection payment in October 2017.

#### Recommendations

Corrigan-Camden ISD should:

- Consider including a requirement in its conflict of interest policies requiring board members, employees, and vendors to complete conflict of interest disclosure forms on an annual basis.
- Ensure that school board members consistently comply with conflict of interest questionnaire requirements.

#### Management's Response

*CCISD management agrees that the recommendations made by the SAO can be beneficial to both the school district and the State of Texas. The CCISD Board Policy CCG (Local) related to conflicts of interest will be updated to include annual conflict of interest disclosure requirements. The revisions will be completed by January 2018. The CCISD Board of Trustees will review on an annual basis the conflict of interest policies and procedures associated with Board Policy CCG (Local). The policy review will be listed on the board agenda and reflected in the board meeting minutes from that particular meeting. As a part of the review, CCISD Board Members will be reminded of the necessity to comply with conflict of interest questionnaire requirements.*

## Port Arthur ISD and Roscoe Collegiate ISD Generally Complied with Statute in Their Execution and Administration of the Audited Agreements

Chapter 3  
Rating:  
Medium<sup>6</sup>

It is important to note that the agreements audited at Port Arthur ISD and Roscoe Collegiate ISD were executed in 2007. Therefore, they were not subject to the new requirements that the 83rd Legislature established. Most of the issues discussed in this chapter are consistent with issues that the State Auditor's Office has previously reported at other ISDs.<sup>7</sup>

### Summary of the Port Arthur ISD and Roscoe Collegiate ISD Agreements Audited

#### Port Arthur ISD Agreement:

- Business associated with the agreement: Motiva Enterprises, LLC.
- Type of business: Petroleum refinery expansion.
- Tax year 2016 appraised value: \$3,473,624,500.
- Appraisal limitation for the maintenance and operation portion of the property taxes the ISD can impose: \$30,000,000.
- Term of agreement: January 1, 2008, through December 31, 2020.

#### Roscoe Collegiate ISD Agreement:

- Business associated with the agreement: Airtricity Champion Wind Farm, LLC, which later became E.ON Climate and Renewables North America, Inc.
- Type of business: Wind farm.
- Tax year 2016 appraised value: \$239,229,580.
- Appraisal limitation for the maintenance and operation portion of property taxes the ISD can impose: \$10,000,000.
- Term of agreement: January 1, 2008, through December 31, 2020.

Sources: Appraisal districts for Jefferson and Nolan Counties, Port Arthur ISD, and Roscoe Collegiate ISD.

Port Arthur ISD and Roscoe Collegiate ISD generally complied with statute in their execution and administration of the audited agreements (see text box for a summary of the audited agreements and Appendix 3 for additional information on the audited agreements). The businesses associated with the agreements certified that they complied with certain requirements of Texas Tax Code, Chapter 313, and Port Arthur ISD and Roscoe Collegiate ISD accepted those certifications.

Port Arthur ISD and Roscoe Collegiate ISD should strengthen certain aspects of oversight and monitoring related to agreements.

Oversight and monitoring of agreements under Texas Tax Code, Chapter 313, is based primarily on information that businesses certify on annual eligibility reports and biennial progress reports they submit to the ISDs. (See Appendix 5 for additional information on required reports.)

Port Arthur ISD and Roscoe Collegiate ISD hired consultants to assist with 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.

The businesses submitted annual eligibility reports and biennial progress reports to the respective ISDs, as required.

<sup>6</sup> 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.

<sup>7</sup> See *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014); *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-042, August 2015); and *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 17-009, October 2016).

However, auditors identified inconsistencies in the businesses' reporting of market values and number of qualifying jobs created. Specifically:

- The market values that the businesses reported on their annual eligibility reports and biennial progress reports did not always match the market values that the county appraisal districts reported.
- The market values and numbers of qualifying jobs created that the businesses reported were not always consistent between the annual eligibility reports and the 2016 biennial progress report submitted.

It is important that businesses submit accurate information to the ISDs because the ISDs report that information to the Comptroller's Office, which uses that information to summarize and report on the effect agreements have had across the state.

Auditors also identified errors in Roscoe Collegiate ISD's summation of the market values and number of qualifying jobs from individual reports (for individual wind farms) that the business submitted.

Port Arthur ISD and Roscoe Collegiate ISD documented their processes for considering the applications for the agreements.

Port Arthur ISD and Roscoe Collegiate ISD documented their determinations of how the audited agreements would comply with the purpose and intent of Texas Tax Code, Chapter 313 (see Table 2 for additional information about the applications).

Table 2

Information on the Applications Associated with the Audited Agreements		
Item	Port Arthur ISD	Roscoe Collegiate ISD
Names of business that applied for the agreement	Motiva Enterprises, LLC	Airtricity Champion Wind Farm, LLC
Date on which the business submitted the original application to the school board	September 1, 2005	February 19, 2007
Date on which the business submitted an amended application to the school board	February 20, 2006, and May 22, 2006	June 13, 2007, and July 16, 2007
<b>Date on which the Comptroller's Office recommended that the application be favorably considered</b>	June 12, 2006	August 3, 2007
Date on which the school board issued its findings related to the effect of the appraisal limitation on the school district, as required by Texas Tax Code, Section 313.025, and approved the agreement	January 25, 2007	September 10, 2007

Sources: The **Comptroller's Office**, **Port Arthur ISD**, and **Roscoe Collegiate ISD**.

To make those determinations, the ISDs relied primarily on their consultants to verify the certified information that the businesses provided in their original and amended applications for agreements.

Texas Tax Code, Section 313.025(f), states that an ISD 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 ISD and the State.

Port Arthur ISD and Roscoe Collegiate ISD should strengthen certain controls related to conflicts of interest.

Port Arthur ISD's and Roscoe Collegiate ISD's conflict of interest policies included all statutory requirements in Texas Local Government Code, Chapters 171 and 176.

However, the conflict of interest policies did not require the filing of disclosure statements on a regular basis or annual affirmations that conflicts

did not exist (see text box for additional information on disclosure statements). Although regular filing and annual affirmations are not required by statute, doing so would reduce the risk that a conflict of interest could exist but is not disclosed. Additionally, the policies were not specific to agreements. Having conflict of interest policies that are specific to agreements would increase overall accountability and transparency of the agreements.

In addition, Roscoe Collegiate ISD did not always ensure that its school board members submitted conflict of interest questionnaires, as required by its policies (see text box for additional information on those conflict of interest questionnaires).

#### Disclosure Statements and Conflict of Interest Questionnaires

Disclosure statements are statements that individuals complete when they become aware of a conflict of interest with an ISD's vendor.

Conflict of interest questionnaires are questionnaires that school board members complete on an annual basis for the preparation of an ISD's annual financial management report. The questionnaires cover any individual or related party interest in school-specific ISD transactions for the prior year.

Sources: Texas Local Government Code, Chapter 176, and Roscoe Collegiate ISD.

Neither Port Arthur ISD nor Roscoe Collegiate ISD required the consultants with which they contracted to negotiate and administer the audited agreements to complete conflict of interest questionnaires that were required by statute in effect at the time the ISDs contracted with their consultants.<sup>8</sup> Under Texas Government Code, Section 176.006, in effect at the time the ISDs contracted with their consultants, a person who sought to contract for services was required to file a completed conflict of interest questionnaire no later than the seventh day after beginning contract

<sup>8</sup> The conflict of interest questionnaires the consultants were required to complete differed from the conflict of interest questionnaires the school board members were required to complete.

discussions, beginning negotiations, or submitting a potential agreement with a local government entity.

Roscoe Collegiate ISD also did not always comply with its policies to identify and report conflicts of interest. Auditors identified two instances in which conflicts of interest were present, however individuals did not complete a disclosure statement or did not complete a disclosure statement in a timely manner. Specifically:

- One school board member was aware of a conflict of interest; however, that individual did not complete a disclosure statement and did not abstain from voting on matters concerning the audited agreement. Auditors determined that the school board member was aware of a conflict of interest as early as November 2007, which was after the initial agreement was executed. In addition, the agreement was amended in December 2007 and that school board member did not abstain from voting on the motion to approve the amendment. It is important to note that if this school board member would have abstained from voting on the motion to approve the amendment, there were still enough school board members to vote on and approve the amended agreement.
- Roscoe Collegiate ISD's superintendent was aware of a conflict of interest in 2011 but did not complete a disclosure statement form until March 2017. It is important to note that, while the superintendent did not vote on matters concerning the audited agreement, that individual had responsibilities related to oversight of the agreement. For example, the superintendent completes the annual certification of tax credit eligibility and amount form, which confirms that the business remains eligible to receive a tax credit and specifies the amount of the tax credit.

The agreements audited at Port Arthur ISD and Roscoe Collegiate ISD included all provisions required by statute in effect at the time of their execution.

**The agreements audited at Port Arthur ISD and Roscoe Collegiate ISD included all provisions required by statute in effect at the time of their execution and were approved by the respective school boards.**

Port Arthur ISD and Roscoe Collegiate ISD should strengthen controls over processing tax credits.

For tax year 2016, Port Arthur ISD and Roscoe Collegiate ISD complied with statutory requirements and directed the tax assessor-collector to apply the applicable tax credits to the property tax bills for the qualified property. However, at the direction of the Texas Education Agency, both of those ISDs paid tax credits directly to the businesses associated with the audited agreements from 2011 through 2015.

The Texas Education Agency relies primarily on the certified information school districts provide to support the appropriateness of additional state aid paid to school districts that have agreements for tax credits issued to businesses. Port Arthur ISD and Roscoe Collegiate ISD did not determine whether the businesses complied with their agreements before they (1) distributed tax credits to the businesses and (2) subsequently requested additional state aid from the Texas Education Agency. Both ISDs ensured that the businesses paid taxes on the qualified property during the two years of the qualifying time period and certified that the business did not relocate outside of the school districts. However, they did not verify the businesses were in full compliance with the agreements, as required by Title 34, Texas Administrative Code, Section 9.1054. Specifically, they did not verify the number of qualified jobs created and maintained by the businesses prior to providing the tax credit each year.

Additionally, Roscoe Collegiate ISD also did not appropriately calculate the total tax credit amount the business was eligible to receive. Specifically, it omitted the maintenance and operations taxes paid for three pieces of qualified property during the qualifying time period from the calculation. As a result, the total tax credit amount was understated by \$12,701. That error did not affect the annual tax credit amounts the business received because of other statutory limitations in Texas Tax Code, Section 313.104, regarding the amount of annual tax credits businesses can receive. However, that error could have an effect on the tax credit settle-up process that will occur after the appraisal limitation expires (see Appendix 5 for additional information on the tax credit settle-up process).

Port Arthur ISD and Roscoe Collegiate ISD should strengthen certain controls over revenue protection payments and payments in lieu of taxes.

Port Arthur ISD and Roscoe Collegiate ISD did not review information related to the revenue protection payments and payments in lieu of taxes. Therefore, they did not always ensure that their consultants accurately calculated the amounts that they should have billed businesses for revenue protection payments and payments in lieu of taxes. As a result:

- The business associated with the agreement underpaid Roscoe Collegiate ISD by a net total of \$57,049.
- The gross tax savings reported for the business associated with the agreement audited at Port Arthur ISD was understated by \$162,557.

In addition, Port Arthur ISD did not initially receive required revenue protection payments (with a net total of \$72,316) for two of the seven tax years tested. After auditors brought that matter to its attention, Port Arthur

ISD contacted the business and collected the applicable revenue protection payments.

The gross tax savings amounts in the biennial cost data reports that Port Arthur ISD and Roscoe Collegiate ISD submitted to the Comptroller's Office also were not always consistent with the values their consultants used to calculate revenue protection payments and payments in lieu of taxes.

#### Recommendations

Port Arthur ISD and Roscoe Collegiate ISD should:

- Ensure that the annual eligibility reports and biennial progress reports they receive contain consistent information.
- Consider including a requirement in their conflict of interest policies requiring board members, employees, and vendors to complete conflict of interest disclosure forms on an annual basis.
- Ensure that all vendors and individuals comply with conflict of interest disclosure requirements.
- Ensure that the businesses are in full compliance with the agreements prior to granting future tax credits.
- Consider reviewing and verifying the accuracy of calculations for revenue protection payments and payments in lieu of taxes.
- Consider ensuring that the information on their biennial cost data reports is consistent with the information used to calculate revenue protection payments and payments in lieu of taxes.

Port Arthur ISD should:

- Develop a process to monitor its receipt of revenue protection payments.

Roscoe Collegiate ISD should:

- Review its summation of individual reports that the business associated with the audited agreement submits to ensure that totals on the consolidated reports that it completes are accurate.
- Recalculate the eligible tax credit amount and include the omitted information for the agreement audited to ensure that it grants the accurate tax credit amount during the tax credit settle-up period.

## Management's Response from Port Arthur ISD

### Recommendations:

- *Ensure that the annual eligibility reports and biennial progress reports they receive contain consistent information.*

### Management Response:

*During the SAO review of the District findings, we noted that especially in terms of the number of qualifying jobs reported, it is possible there would be inconsistencies in the number of jobs reported in reports over the course of the Agreement. Qualifying jobs are permanent jobs. If the jobs no longer exist at the time a report is filed or if a job later becomes a permanent job, the company would necessarily submit information that is inconsistent with a prior year's report. It is also possible that the market value of qualifying property might be reported differently in a later year should there have been an appeal of qualifying property. The District will not require the companies to amend reports filed in previous years to match information filed in later years.*

*The District, however, will require its consultants to ensure that all reports filed in any tax year have consistent information between the annual eligibility report and biennial progress report for such tax year.*

- *Consider including a requirement in their conflict of interest policies requiring board members, employees, and vendors to complete conflict of interest disclosure forms on an annual basis.*

### Management Response:

*Our consultants have prepared a revised Board Policy and Board Exhibit that will require Board members and the Superintendent to annually give notice of any conflict of interest with any existing Chapter 313 agreement. In order to ensure that all Board members are aware of existing agreements, the Superintendent will submit to each Board member annually a list of all existing Chapter 313 agreements. Each Board member and the Superintendent will submit a notarized response as to whether or not a conflict of interest exists as to each existing Chapter 313 agreement. This will ensure that each Board member is given specific knowledge of all existing agreements should Board membership change over the course of the Chapter 313 agreement. The Board policy will be reviewed for compliance with state law by the TASB policy service before the Board officially adopts the new policy. In addition, the District will require that the vendors annually submit the conflict of interest questionnaire provided by the Texas Ethics*

*Commission. The District will not require any other employees to complete any conflict of interest statements.*

- *Ensure that all vendors and individuals comply with conflict of interest disclosure requirements.*

*Management Response:*

*Our consultants have prepared a revised Board Policy and Board Exhibit that will require Board members and the Superintendent to annually give notice of any conflict of interest with any existing Chapter 313 agreement. In order to ensure that all Board members are aware of existing agreements, the Superintendent will submit to each Board member annually a list of all existing Chapter 313 agreements. Each Board member and the Superintendent will submit a notarized response as to whether or not a conflict of interest exists as to each existing Chapter 313 agreement. This will ensure that each Board member is given specific knowledge of all existing agreements should Board membership change over the course of the Chapter 313 agreement. The Board policy will be reviewed for compliance with state law by the TASB policy service before the Board officially adopts the new policy. In addition, the District will require that the vendors annually submit the conflict of interest questionnaire provided by the Texas Ethics Commission. The District will not require any other employees to complete any conflict of interest statements.*

- *Ensure that the businesses are in full compliance with the agreements prior to granting future tax credits.*

*Management Response:*

*Tax credits are no longer available to companies applying for an appraised value limitation agreement. The SAO determined that the District did not verify the company was in full compliance with the Chapter 313 Agreement prior to granting the tax credit. In its example, the SAO found that the District did not verify the number of qualifying jobs prior to issuing the tax credit. As seen in the official resolution adopted by the Board of Trustees, the Board did expressly determine that the company was in compliance with the Agreement before issuing the credit. Specifically, the District examined the tax rolls, the January 25, 2007 Chapter 313 Agreement, the most recent Annual Eligibility Reports and the most recent Biennial Progress Report to determine compliance with the Agreement before issuing the tax credit to the company. The reports submitted by the company include the total number of employees for the project, the average wages paid to the employees, the number of hours employees have worked, and the number of employees that receive health benefits. The District was able to determine from this information*

*provided by the company that the company had created the number of qualifying jobs required to be in compliance with the Chapter 313 agreement. Information provided by the company as to employment is the only possible information available to the District for determining compliance with the job creation requirement. The information is submitted on a government approved form, signed by a company authorized representative under the penalty of perjury for submitting false information. The District maintains that relying on summary reports prepared by the company submitted under the penalty of perjury is a sufficient process to verify compliance with the job creation requirement.*

- *Consider reviewing and verifying the accuracy of calculations for revenue protection payments and payments in lieu of taxes.*

*Management response:*

*The District has a process in place to verify the accuracy of calculations. The District and Consultants rely on data provided by the local appraisal district, tax office, and Applicant in preparing the calculations for revenue protection payments and payments in lieu of taxes. 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 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.*

- *Consider ensuring that the information on their biennial cost data reports is consistent with the information used to calculate revenue protection payments and payments in lieu of taxes.*

*Management response:*

*As noted during the onsite and follow up interview of the Port Arthur ISD, the timing of the reports and the calculation of the revenue protection payment do not align. The reports for the Tax Year that is the subject of the revenue protection calculation is filed 6-8 months after the calculation is done. The report on file at the time the revenue protection payment is calculated only has an estimate of value for the applicable tax year.*

*The SAO made additional findings specific to the Port Arthur ISD:*

- *Develop a process to monitor its receipt of revenue protection payments.*

**Management response:**

*The SAO findings did determine that two revenue protection payments were not timely received by the school district. Beginning in 2015, the District's consultants have submitted follow up emails to the District to determine whether or not the revenue protection payment has been received by the District.*

*The District will continue to use this method to monitor its receipt of revenue protection payments.*

Auditor Follow-up Comment

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.

**Management's Response from Roscoe Collegiate ISD**

**Recommendations:**

- *Ensure that the annual eligibility reports and biennial progress reports they receive contain consistent information.*

**Management Response:**

*During the SAO review of the District findings, we noted that especially in terms of the number of qualifying jobs reported, it is possible there would be inconsistencies in the number of jobs reported in reports over the course of the Agreement. Qualifying jobs are permanent jobs. If the jobs no longer exist at the time a report is filed or if a job later becomes a permanent job, the company would necessarily submit information that is inconsistent with a prior year's report. It is also possible that the market value of qualifying property might be reported differently in a later year should there have been an appeal of qualifying property. The District will not require the companies to amend reports filed in previous years to match information filed in later years.*

*The District, however, will require its consultants to ensure that all reports filed in any tax year have consistent information between the annual eligibility report and biennial progress report for such tax year.*

- *Consider including a requirement in their conflict of interest policies requiring board members, employees, and vendors to complete conflict of interest disclosure forms on an annual basis.*

*Management Response:*

*Our consultants have prepared a revised Board Policy and Board Exhibit that will require Board members and the Superintendent to annually give notice of any conflict of interest with any existing Chapter 313 agreement. In order to ensure that all Board members are aware of existing agreements, the Superintendent will submit to each Board member annually a list of all existing Chapter 313 agreements. Each Board member and the Superintendent will submit a notarized response as to whether or not a conflict of interest exists as to each existing Chapter 313 agreement. This will ensure that each Board member is given specific knowledge of all existing agreements should Board membership change over the course of the Chapter 313 agreement. The Board policy will be reviewed for compliance with state law by the TASB policy service before the Board officially adopts the new policy. In addition, the District will require that the vendors annually submit the conflict of interest questionnaire provided by the Texas Ethics Commission. The District will not require any other employees to complete any conflict of interest statements.*

- *Ensure that all vendors and individuals comply with conflict of interest disclosure requirements.*

*Management Response:*

*Our consultants have prepared a revised Board Policy and Board Exhibit that will require Board members and the Superintendent to annually give notice of any conflict of interest with any existing Chapter 313 agreement. In order to ensure that all Board members are aware of existing agreements, the Superintendent will submit to each Board member annually a list of all existing Chapter 313 agreements. Each Board member and the Superintendent will submit a notarized response as to whether or not a conflict of interest exists as to each existing Chapter 313 agreement. This will ensure that each Board member is given specific knowledge of all existing agreements should Board membership change over the course of the Chapter 313 agreement. The Board policy will be reviewed for compliance with state law by the TASB policy service before the Board officially adopts the new policy. In addition, the District will require that the vendors annually submit the conflict of interest questionnaire provided by the Texas Ethics Commission. The District will not require any other employees to complete any conflict of interest statements.*

- *Ensure that the businesses are in full compliance with the agreements prior to granting future tax credits.*

*Management Response:*

*Tax credits are no longer available to companies applying for an appraised value limitation agreement. The SAO determined that the District did not verify the company was in full compliance with the Chapter 313 Agreement prior to granting the tax credit. In its example, the SAO found that the District did not verify the number of qualifying jobs prior to issuing the tax credit. As seen in the official resolution adopted by the Board of Trustees, the Board did expressly determine that the company was in compliance with the Agreement before issuing the credit. Specifically, the District examined the tax rolls, the September 10, 2007 Chapter 313 Agreement, the most recent Annual Eligibility Reports and the most recent Biennial Progress Report to determine compliance with the Agreement before issuing the tax credit to the company. The reports submitted by the company include the total number of employees for the project, the average wages paid to the employees, the number of hours employees have worked, and the number of employees that receive health benefits. The District was able to determine from this information provided by the company that the company had created the number of qualifying jobs required to be in compliance with the Chapter 313 agreement. Information provided by the company as to employment is the only possible information available to the District for determining compliance with the job creation requirement. The information is submitted on a government approved form, signed by a company authorized representative under the penalty of perjury for submitting false information. The District maintains that relying on summary reports prepared by the company submitted under the penalty of perjury is a sufficient process to verify compliance with the job creation requirement.*

- *Consider reviewing and verifying the accuracy of calculations for revenue protection payments and payments in lieu of taxes.*

*Management response:*

*The District has a process in place to verify the accuracy of calculations. The District and Consultants rely on data provided by the local appraisal district, tax office, and Applicant in preparing the calculations for revenue protection payments and payments in lieu of taxes. 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 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.*

- *Consider ensuring that the information on their biennial cost data reports is consistent with the information used to calculate revenue protection payments and payments in lieu of taxes.*

*Management response:*

*As noted during the onsite and follow up interview of the Roscoe Collegiate ISD, the timing of the reports and the calculation of the revenue protection payment do not align. The reports for the Tax Year that is the subject of the revenue protection calculation is filed 6-8 months after the calculation is done. The report on file at the time the revenue protection payment is calculated only has an estimate of value for the applicable tax year.*

*The SAO made additional findings specific to the Roscoe Collegiate ISD:*

- *Review its summation of individual reports that the business associated with the audited agreement submits to ensure that totals on the consolidated reports that it completes are accurate.*

*Management response:*

*The District will require that the information provided in the consolidate reports properly summarize the information provided in the individual reports. The District will require that the information is reviewed by at least two individuals before the final report is submitted to the Comptroller's Office.*

- *Recalculate the eligible tax credit amount and include the omitted information for the agreement audited to ensure that it grants the accurate tax credit amount during the tax credit settle-up period.*

*Management response:*

*The official Board action to grant the tax credit approved the credit amount calculated using the values and taxes paid only the property included by the company on its application. The parcels identified by the SAO are qualifying property that is subject to the appraised value limitation agreement. Based on the certification of value provided by the appraisal district of the qualified property, the District has been using the parcels to determine the total amount of taxes imposed on qualified property each year to determine the*

*maximum amount of tax credit. Under Chapter 313 of the tax code, there is only a remedy to adjust a tax credit if the total credit received was more than the company earned. There is not a corresponding process to recalculate the credit for an amount greater than the one for which the company applied. Nor is there a requirement that the company must apply for a credit against all the qualifying property subject to the agreement. Companies are entitled to tax credits, not mandated to receive tax credits. As the total credit earned was based on the application filed by the company and there is no statutory guidance on how a credit can be recalculated for a greater amount, the District will not be recalculating the credit.*

Auditor Follow-up Comment

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.

# Appendices

Appendix 1

## Objectives, Scope, and Methodology

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### 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 whether new processes established by the Office of the Comptroller of Public Accounts (Comptroller's Office) were sufficient to address new requirements for the Comptroller's Office established by amendments the 83rd Legislature made to Texas Tax Code, Chapter 313.

### Scope

The scope of the audit covered selected applications and appraisal limitation agreements (agreements) processed from January 1, 2002, through December 31, 2016. The scope for the audit work completed at the Comptroller's Office covered new processes related to agreements established from January 1, 2014, through December 31, 2016.

### Methodology

The audit methodology included selecting agreements to audit at three independent school districts (ISDs). Auditors selected the agreements using information that the businesses with the agreements reported, including estimated net tax benefit to the businesses as a result of the appraisal limitation, total gross savings for the businesses as a result of the appraisal limitation and tax credits (if applicable), number of qualified jobs the

businesses reported that they created compared to the number of qualified jobs they committed to create, the qualified investment the businesses made, and payments in lieu of taxes. The three agreements selected were:

- An agreement between Corrigan-Camden ISD and Martco Limited Partnership and Roy O. Martin LMB Mgmt, LLC for property used in manufacturing (that agreement was later assigned to Corrigan OSB LLC).
- An agreement between Port Arthur ISD and Motiva Enterprises, LLC for property used in manufacturing.
- An agreement between Roscoe Collegiate ISD and Airtricity Champion Wind Farm, LLC (which later became E.ON Climate and Renewables North America, Inc.) for property used in renewable energy electric generation.

The audit methodology also included testing applications, agreements, conflict of interest policies and procedures, progress reports, and tax credit documentation and conducting interviews with ISD staff, consultants, and county appraisal district staff.

In addition, the audit methodology included conducting selected tests at the Comptroller's Office related to processing applications, reporting on compliance with job-creation requirements, and biennial reporting requirements and conducting interviews with the Comptroller's Office management and staff.

#### Data Reliability and Completeness

Auditors' assessment of the reliability of (1) the agreement data that the Comptroller's Office used to prepare the January 2017 *Report of the Texas Economic Development Act* and (2) property tax data from the Comptroller's Office was based on prior audit work performed and performing limited review of the data for reasonableness and completeness. Auditors determined the data was sufficiently reliable for 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 and performing limited review of the data for reasonableness and completeness. Auditors determined the data was sufficiently reliable for the purposes of this audit.

#### Sampling Methodology

Auditors selected a nonstatistical, random sample of applications submitted to the Comptroller's Office after January 1, 2014, to test new application review processes established as a result of new requirements that the 83rd Legislature established. That sample was designed to be representative of

the population and results may be projected to the population, but the accuracy of the projection cannot be measured.

Auditors selected a nonstatistical, random sample of agreements executed between January 2014 and May 2016 to test new job-creation compliance reporting processes established in response to new requirements that the 83rd Legislature established. That sample was designed to be representative of the population and results may be projected to the population, but the accuracy of the projection cannot be measured. Auditors also used professional judgment to select additional agreements for testing. Those sample items were generally not representative of the population and, therefore, it would not be appropriate to project those test results to the population.

Information collected and reviewed included the following:

- Agreements between ISDs and businesses.
- Application documentation.
- Minutes from ISD school board meetings.
- Annual and biennial reports.
- ISD and Comptroller's Office policies and procedures.
- Conflict of interest statements signed by selected ISD school board members and management.
- Tax credit applications, requests for additional state aid, property tax statements and receipts, and tax credit payments.
- Supporting documentation for calculations and payments of revenue protection payments and payments in lieu of taxes.
- Additional state aid payment data for tax years 2006 through 2015.
- Agreement data used to develop the Comptroller's Office's *Report of the Texas Economic Development Act*, January 2017.

Procedures and tests conducted included the following:

- Interviewed each audited ISD's school board members, management, staff, and consultant; county appraisal district staff; and Comptroller's Office staff.
- Reviewed ISD and Comptroller's Office policies and procedures.

- Reviewed ISD school board meeting minutes.
- Reviewed application and supporting documentation for selected agreements.
- Reviewed conflict of interest questionnaires and disclosure statements prepared by members of ISD school boards and management.
- Reviewed annual eligibility reports, biennial progress reports, and biennial cost data request reports for selected agreements.
- Reviewed supporting documentation for calculations and payments for revenue protection payments and payments in lieu of taxes.
- Reviewed tax credit applications, tax receipts and statements, and tax credits provided.
- Reviewed supporting documentation for selected applications processed by the Comptroller's Office.
- Reviewed user access controls at the Comptroller's Office.
- Reviewed documentation for selected job-creation compliance reports submitted to the Comptroller's Office.
- Reviewed support for calculations made to report aggregate data in the Comptroller's Office's *Report of the Texas Economic Development Act*, January 2017.

Criteria used included the following:

- Texas Tax Code, Chapter 313.
- Texas Local Government Code, Chapters 171 and 176.
- Title 34, Texas Administrative Code, Chapter 9.
- Texas Education Code, Chapter 42.
- ISD policies and procedures.
- Comptroller's Office policies and procedures.
- Agreements between the ISDs and the businesses.

#### Project Information

Audit fieldwork was conducted from January 2017 through July 2017. 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:

- Tammie Wells, MBA, CIA (Project Manager)
- Rachel Lynne Goldman, CPA (Assistant Project Manager)
- Ro Amonett, MPA
- Robert H. (Rob) Bollinger, CPA, CGMA, CFE
- Teri Lynn Incremona, CFE
- Jack K. Lee, CPA
- Alexander Sumners
- Martin Torres
- Brianna C. Pierce, CPA (Quality Control Reviewer)
- Cesar Saldivar, CGAP (Audit Manager)

## 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 3 provides a description of the issue ratings presented in this report.

Table 3

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)/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.
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 Audited Agreements

Table 4 shows selected background and financial information related to the three agreements for limitation on the appraised value of property (agreements) audited at three independent school districts (ISDs).

Table 4

Background Information on the Agreements Audited			
School Districts			
	Corrigan-Camden ISD	Port Arthur ISD	Roscoe Collegiate ISD
Businesses with Agreement	Martco Limited Partnership and Roy O. Martin LMB MGT, LLC; the agreement was later assigned to Corrigan OSB, LLC	Motiva Enterprises, LLC	Airtricity Champion Wind Farm, LLC (which later became E.ON Climate and Renewables North America, Inc.)
Application Number	1018	37	63
Business Category	Manufacturing (lumber)	Manufacturing (petroleum refinery expansion)	Renewable energy electric generation (wind farm)
County	Polk	Jefferson	Fisher, Mitchell, Nolan, and Scurry
Length of Agreement	December 9, 2014, through December 31, 2031	January 1, 2008, through December 31, 2020	January 1, 2008, through December 31, 2020
Appraisal Value Limitation	\$20,000,000	\$30,000,000	\$10,000,000
Tax Year 2016 Appraised Value	\$13,849,353	\$3,473,624,500	\$239,229,580
Net Tax Benefit to Businesses (reported on the 2016 Biennial Cost Data Request Form)	\$0 <sup>a</sup>	\$163,642,492	\$13,653,987
Projected Total Net Tax Benefit to Business (based on the 2016 Biennial Cost Data Request Form)	\$13,811,551	\$238,384,716	\$18,058,235
Number of Qualifying Jobs Created as Reported by the Businesses (as of December 31, 2016)	11	762	27
Projected Qualifying Jobs	145	250	10
Projected Total Net Tax Benefit per Qualifying Job (calculated by auditors)	\$95,252	\$312,841	\$668,824

Background Information on the Agreements Audited

School Districts			
	Corrigan-Camden ISD	Port Arthur ISD	Roscoe Collegiate ISD
Total Tax Credits Paid (as of December 31, 2016)	Not applicable <sup>b</sup>	\$1,458,669	\$2,394,837
Total Tax Credits Businesses Were Eligible to Receive	Not applicable <sup>b</sup>	\$1,701,780	\$3,501,907
Total Projected Investment	\$262,000,000	\$3,500,000,000	\$126,450,000
Qualified Investment (as of December 31, 2016, based on the 2016 Biennial Progress Report)	\$58,197,777	\$4,848,643,900	\$217,325,189
Revenue Protection Payments that ISD Received from Businesses (as of December 31, 2016, based on the 2016 Biennial Cost Data Request Form)	\$0 <sup>a</sup>	\$314,772	\$1,062,445
Supplemental Payments ISD Received from Businesses (as of December 31, 2016)	\$276,000 <sup>c</sup>	\$28,000,000 <sup>d</sup>	\$10,202,213 <sup>c</sup>
Other Tax Abatements and Other Economic Development Incentives Businesses Received	Property tax abatement from the Polk County Appraisal District.	Property tax abatements from the Jefferson County Drainage District No. 7, the Jefferson County Waterway and Navigation District, and the Port of Port Arthur Navigation District.	Property tax abatements from Fisher County, the Fisher County Hospital District, Mitchell County, the Mitchell County Hospital District, Nolan County, the Nolan County Hospital District, Scurry County, and Western Texas College.

<sup>a</sup> As of December 31, 2016, a net tax benefit had been not reported for the business and the ISD had not collected any revenue protection payments from the business. The agreement was still within the qualifying time period for tax years 2015 and 2016. The appraisal limitation period for the agreement commenced on January 1, 2017.

<sup>b</sup> The 83rd Legislature eliminated the ability of businesses with agreements to receive tax credits. That change was applicable to applications for agreements completed on or after January 1, 2014.

<sup>c</sup> The supplemental payments amount for Corrigan-Camden ISD and Roscoe ISD include payments received in January 2017.

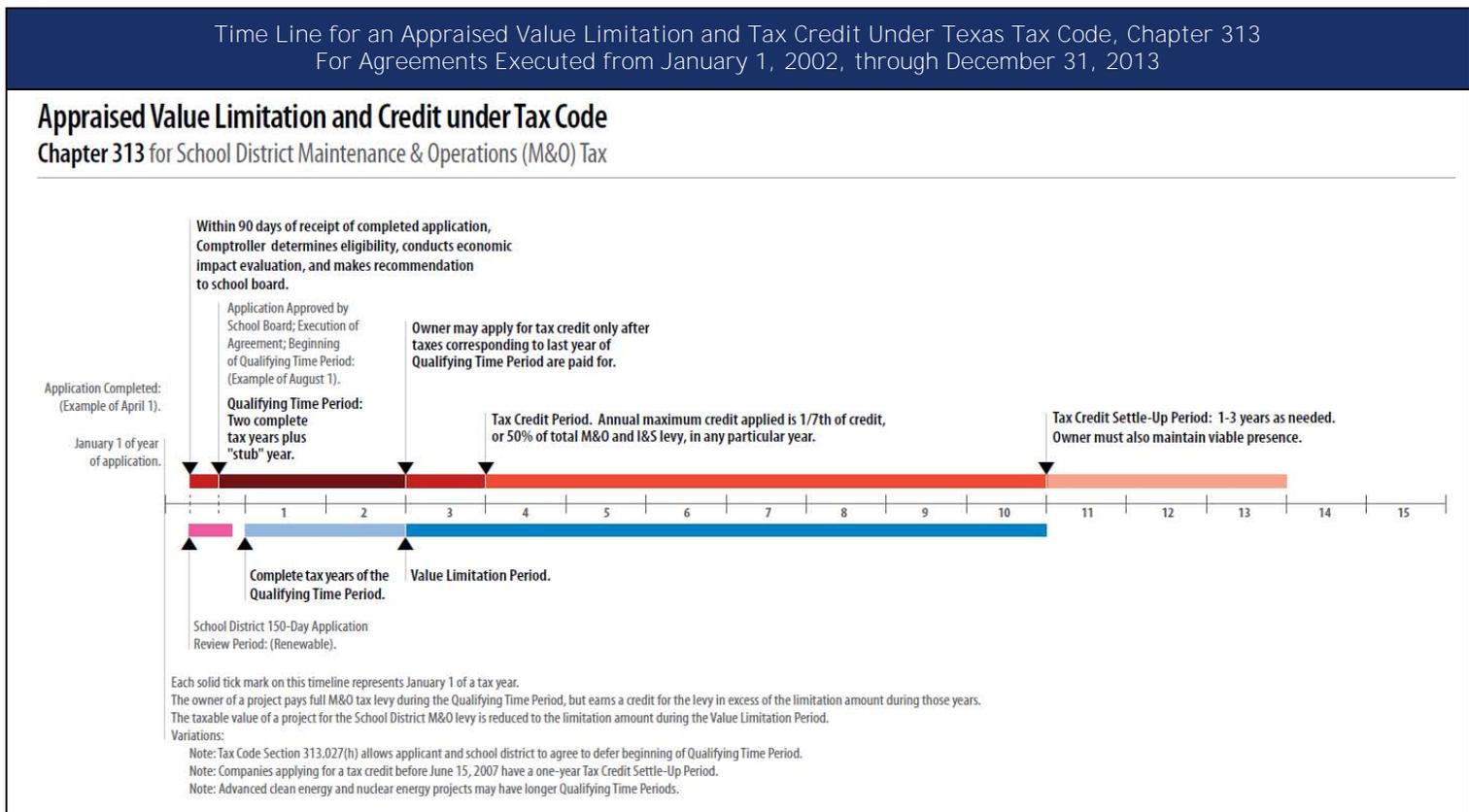
<sup>d</sup> The agreement included a provision that allowed the payments in lieu of taxes to be offset by payments made to the ISD under a separate foreign trade zone exemption and tax equivalency payment agreement between the ISD and the business.

## Time Line of Appraised Value Limitation and Tax Credits under Texas Tax Code, Chapter 313

Figure 1 shows an example of a time line for agreements for limitations on the appraised value of properties (agreements) executed from January 1, 2002, through December 31, 2013, as illustrated by the Office of the Comptroller of Public Accounts (Comptroller’s Office). The time line reflects certain changes the Legislature made to Texas Tax Code, Chapter 313. Specifically:

- The 80th Legislature expanded the tax credit settle-up period from one year to three years. That change was effective on June 15, 2007.
- The 81st Legislature changed the default date for the beginning of the qualifying time period from January 1 of the year following school board approval of the application to the execution date of the agreement (unless otherwise deferred). That change created the “stub” year mentioned in Figure 1, and it was effective June 19, 2009.

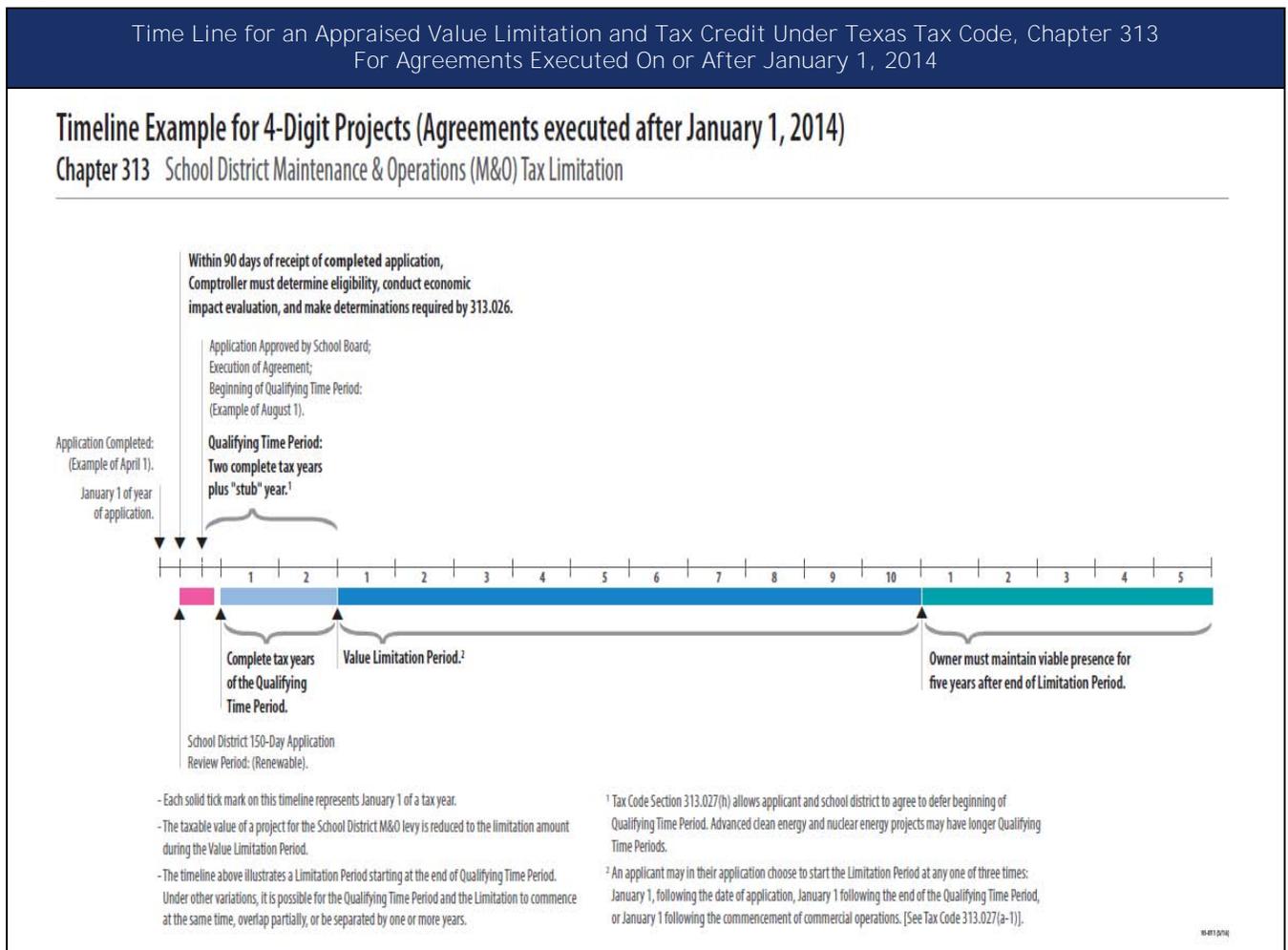
Figure 1



Source: The Comptroller’s Office.

Figure 2 shows an example of a time line for applications for agreements completed on or after January 1, 2014, as illustrated by the Comptroller’s Office. The time line reflects certain changes the 83rd Legislature made. Specifically, it (1) enabled independent school districts (ISDs) to extend the appraisal limitation time period from an 8-year period to a 10-year period, (2) eliminated the ability of businesses with agreements to receive tax credits, and (3) extended the time period for a property owner to maintain a viable presence in the ISD from three years to five years after the date the limitation on appraised value of the owner’s property expires.

Figure 2



Source: The Comptroller’s Office.

## Glossary of Selected Terms Related to Agreements

Table 5 lists the definitions for selected terms used in the administration of agreements for limitations on the appraised value of property (agreements).

Table 5

Glossary of Selected Terms Related to Agreements	
Term	Definition
Annual eligibility report	<p><b>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.</b></p> <p>School districts are required to review those reports, retain the original reports, and submit PDF versions of <b>the completed and signed reports and any attachments to the Comptroller's Office by June 15 of every year.</b></p>
Biennial progress report	<p><b>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.</b></p> <p><b>The Comptroller's Office requests 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.</b></p>
Biennial school district cost data request form	<p><b>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.</b> 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>
Certificate for limitation of appraised value	<p><b>As of December 31, 2016, Texas Tax Code, Section 313.025, requires the Comptroller's Office to issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide the governing body a written explanation of the Comptroller's Office's decision not to issue a certificate. The governing body of a school district may not approve an application unless the Comptroller's Office submits to the governing body a certificate for a limitation on appraised value of the property.</b></p> <p>That requirement was effective for all applications completed on or after January 1, 2014.</p> <p><b>Texas Tax Code, Section 313.026, requires the Comptroller's Office's determination on whether to issue a certificate for a limitation on appraised value to be based on the required economic impact evaluation and on any other information available to the Comptroller's Office, including information provided by the governing body of the school district.</b></p> <p>Additionally, the <b>Texas Tax Code, Section 313.026, states that the Comptroller's Office may not issue a certificate for a limitation on appraised value unless it determines both of the following:</b></p> <ul style="list-style-type: none"> <li>▪ The project proposed by the applicant is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue, including state tax revenue, school district maintenance and operations ad valorem tax revenue attributable to the project, and any other tax revenue attributable to the effect of the project on the economy of the state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement.</li> <li>▪ The limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas.</li> </ul>
Job-creation compliance report	<p><b>The Comptroller's Office requires each agreement holder to submit job-creation compliance reports directly to the Comptroller's Office by June 15 of every year. The Comptroller's Office requests that agreement holders submit both an electronic version and a signed, hard-copy version.</b></p> <p>That requirement applies only to agreements resulting from applications determined to be complete after January 1, 2014.</p>

## Glossary of Selected Terms Related to Agreements

Term	Definition
Payments in lieu of taxes	<p>The terms of the agreements audited specified that payments in lieu of taxes were intended to support a school district as a result of its consideration in executing an agreement with a business.</p> <p>The Corrigan-Camden Independent School District (ISD) agreement audited specified that the business would pay Corrigan-Camden ISD a set payment amount that was equal to the greater of \$100 per student per year in average daily attendance, as defined by Section 42.005 of the Texas Education Code, or \$50,000 per year.</p> <p>The Port Arthur ISD agreement audited specified that the business would pay Port Arthur ISD a set payment for years 3 through 10 of the agreement that would be offset by credits for all payments made to Port Arthur ISD under a separate agreement between Port Arthur ISD and the business, the Foreign Trade Zone Exemption and Tax Equivalency Payment agreement.</p> <p>The Roscoe ISD agreement audited specified that the business would pay Roscoe ISD an annual payment equal to 40 percent of the net tax benefit the business received each tax year.</p>
Qualified property	<p>As of December 31, 2016, Texas Tax Code, Section 313.021(2), defined qualified property as follows:</p> <p>Land:</p> <ul style="list-style-type: none"> <li>▪ That is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Texas Government Code, Chapter 2303.</li> <li>▪ 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.</li> <li>▪ That is not subject to a tax abatement agreement entered into by a school district under Texas Tax Code, Chapter 312.</li> <li>▪ On which, in connection with the new building or new improvement described by subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2), the owner or lessee of, or the holder of another possessory interest in, the land proposes to: <ul style="list-style-type: none"> <li>• Make a qualified investment in an amount equal to at least the minimum amount required by Texas Tax Code, Section 313.023.</li> <li>• Create at least 25 new qualifying jobs.</li> </ul> </li> </ul> <p>The new building or other new improvement described by subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2).</p> <p>Tangible personal property:</p> <ul style="list-style-type: none"> <li>▪ That is not subject to a tax abatement agreement entered into by a school district under Texas Tax Code, Chapter 312.</li> <li>▪ For which a sales and use tax refund is not claimed under Texas Tax Code, Section 151.3186.</li> </ul> <p>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 subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2), 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.</p>

## Glossary of Selected Terms Related to Agreements

Term	Definition
Qualifying investment	<p>As of December 31, 2016, 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"> <li>▪ Integrated systems, fixtures, and piping.</li> <li>▪ All property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances.</li> <li>▪ Production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting.</li> </ul> <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"> <li>▪ Property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power.</li> <li>▪ Property and systems necessary to control radioactive contamination.</li> </ul> <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"> <li>▪ 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.</li> <li>▪ 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.</li> </ul> <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.</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, 2016, 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"> <li>▪ Requires at least 1,600 hours of work a year.</li> <li>▪ Is not transferred from one area in Texas to another area in Texas.</li> <li>▪ Is not created to replace a previous employee.</li> <li>▪ 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.</li> <li>▪ Pays at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located.</li> </ul>

## Glossary of Selected Terms Related to Agreements

Term	Definition
Qualifying time period	<p>As of December 31, 2016, Texas Tax Code, Section 313.021(4), defined a qualifying time period as follows:</p> <p><b>The period that begins on the date that a person’s application for a limitation</b> 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"> <li>▪ In connection with a nuclear electric power generation facility, the first seven tax years that begin on or <b>after the third anniversary of the date the school district approves the property owner’s application for a limitation</b> 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.</li> <li>▪ In connection with an advanced clean energy project, as defined by Texas Health and Safety Code, Section 382.003, the first five tax years that begin on or after the third anniversary of the date the school district <b>approves the property owner’s application for a limitation on appraised value under this subchapter</b>, unless a shorter time period is agreed to by the governing body of the school district and the property owner.</li> </ul>
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"> <li>▪ <b>The first three tax years that begin on or after the date the person’s eligibility for the limitation expires.</b></li> <li>▪ 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 <b>not credited against the person’s taxes during the</b> limitation period.</li> <li>▪ 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.</li> </ul>

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

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