



# Watch Your Assets

**Exposing the misuse and abuse of the public commons**

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## **Robbing “Robin Hood”:**

**How Texas school districts subsidize wealthy corporations at the expense of the state’s public education fund**

*Part 1 of 2 in a series*

In the name of economic development, Texas school districts have used a 2001 state law to handout hundreds of millions of dollars in property-tax breaks to big business. The Comptroller estimates that these tax breaks will cost the state’s public school finance system over \$800 million in lost revenue over the next four years. Complete estimates are hard to calculate because no state agency tracks how widespread these tax breaks are used.

HB 1200 allows school districts to offer businesses discounts on their annual property tax bills, with the intention of luring large-scale investment into districts with lackluster property-tax revenues. In return for these tax incentives, businesses pledge to invest in the local community and to create certain kinds of jobs. Although officially enacted to stimulate growth in property-poor districts, in practice, property-rich districts dole out the majority of these tax breaks.

These school districts can use the program to circumvent “Robin Hood,” the state policy that seeks to reduce inequities in school funding by redistributing dollars from rich to poor school districts. Under these agreements, businesses can make a large investment in a community without increasing the amount of money the school district must give back to the state through the so-called “Robin Hood” program.

Businesses receiving these tax breaks often agree to return up to 50 percent of their tax savings to the district. Such kickbacks are not subject to Robin Hood redistribution. Furthermore, these kickbacks prove that the business could have been enticed to develop in the region at up to half the cost in lost school property taxes.

In 2005 and 2006, just six businesses received these tax breaks at a cost of \$15 million to the state’s public school finance system.<sup>1</sup> As of May 2007, 50 additional businesses had applications in the pipeline.<sup>2</sup> The state comptroller estimates that in the 2008-09 school

year, the program will cost the state over \$300 million and over \$500 million in 2010-11.<sup>3</sup> Other taxpayers must replace the revenues lost to this little-known program, which is expanding with minimal oversight.

Because no state agency has tracked how many of these development agreements have been signed the program's full cost to the state remains unknown. The school consultant firm Moak & Casey, which represents most of the school districts pursuing these tax break deals, reports that at least 35 client districts had signed tax break contracts by the end of 2006.

The state has a minimal role in overseeing applications for these tax breaks and does not verify that businesses comply with the obligations that they commit to in their final contracts with school districts. The school districts signing these deals similarly do not appear to ensure that businesses comply with these obligations.

### **The Texas Economic Development Act**

As a member of the Texas House in 2001, now-Senator Kim Brimer (R-Ft. Worth) authored HB 1200, the Texas Economic Development Act.<sup>4</sup> The law allows school districts to offer to limit the appraised value of a property for tax purposes. In 2002, for example, Premcor Corp. agreed to invest \$550 million in a Port Arthur refinery. In return, the Port Arthur school district agreed to limit the appraised value of the property to \$30 million.

Agreements usually last 13 years. In the first two years of the agreement Premcor paid the school district taxes on the full value of the property as it was being developed. For the next eight years, however, the company will be taxed as if it just owned \$30 million in local property. Premcor also agreed to maintain a presence in the community for three years after the duration of the tax break, paying taxes on the full value of the property.

Businesses are also eligible for a tax credit for taxes paid in the first two years of the agreement. Premcor, for example, applied for tax credits to cover the \$459,738 in tax that it paid the school district before its property-tax cap took effect. School districts finance these tax credits and are reimbursed by the state's public school fund.

Because the Texas Education Agency has yet to finalize procedures to file for these tax credits, no such tax-credit payments have been made. Once these payments start, they will increase what these agreements cost the state each year. The Comptroller's office has not collected data required to estimate what these tax credits are likely to cost the state over time.

The state plays a minimal role in managing these agreements. All applications for the local tax breaks must be sent to the state Comptroller's office for a non-binding recommendation. The Comptroller must review the applications for compliance with the minimal requirements of the development act. But school districts execute the agreements without any real state oversight.

TPJ used the Comptroller’s list of 56 recommended projects to estimate the financial impact of the law. The estimated value of the tax breaks if all 56 applications are signed is \$173 million per year at each district’s 2006 property tax rate.<sup>5</sup>

**(See Appendix for a listing of all tax break applications.)**

HB 1200 was originally intended to give a boost to the manufacturing industry, but the state legislature continues to tack on new uses for the program. Companies engaged in research and development, nuclear power, renewable energy, coal gasification and “clean coal” projects are now eligible for the tax breaks.

Of the 56 applications held by the Comptroller, 29 involve wind power projects that are seeking more than \$60 million in annual property-tax breaks. The oil and gas industry, which accounts for just 11 applications, is seeking \$73 million in annual tax cuts.

**Types of Projects Seeking Property-Tax Cuts**

<b>Project Type</b>	<b>Estimated Annual Value of Tax Break</b>	<b>No. of Applications</b>
Oil & Gas	\$73,190,406	11
Wind Power Generation	\$60,440,512	29
Chemical Manufacturing / Processing	\$14,277,036	7
Research & Development / Data Centers	\$12,077,640	4
Vehicle Manufacturing	\$7,713,100	1
Semiconductor Manufacturing	\$3,103,800	2
Miscellaneous Manufacturing	\$2,391,310	2
<b>TOTAL</b>	<b>\$173,193,804</b>	<b>56</b>

Port Arthur Independent School District (ISD) and Blackwell Consolidated ISD have applied for the largest tax breaks under this program. Port Arthur has signed three contracts with oil and gas companies and has another one pending. Collectively, these projects would award an estimated \$49 million in annual property-tax breaks. Blackwell has signed three contracts with wind farms worth an estimated \$13 million.

In return for these generous tax breaks, the law requires that businesses create a certain number of “qualifying jobs,” or permanent full-time jobs that pay 110 percent of the county’s average weekly manufacturing wage.<sup>6</sup> Employers also must pay at least 80 percent of health-insurance premiums for applicable workers. These tax breaks are intended to create relatively good jobs. The law only requires businesses to create 25 of these jobs in urban areas, a requirement that drops to just 10 jobs in rural areas. The 2007 Legislature passed a law that allows districts to waive the job creation requirement altogether.<sup>7</sup>

With so few jobs created, almost half of the applications involve investments of over \$100,000 per job. By contrast the Texas Enterprise Fund, the governor's business incentive program, spends around \$10,000 per job created.<sup>8</sup>

Grey LeRoy, executive director of Good Jobs First, a D.C.-based corporate-subsidy watchdog organization, says the most generous subsidies studied by his organization top out around \$35,000 per job. Many tax-break projects awarded by Texas school districts have a cost of more than three times that amount. A major failing of this incentive program is that it is based on an arbitrary minimum number of jobs created – regardless of the size of the tax break. “Everybody’s allowed to lowball,” LeRoy says. “The threshold should be pegged to [a] subsidy per job and capped that way.”

The Comptroller makes non-binding recommendations for an application based in part on the level of investment per job. TPJ's analysis of 10 tax break agreements found that some businesses reported a larger number of jobs on these applications than they pledged to create in their actual final contracts with school districts. A Hewlett-Packard application, for example, reported that the company would create 140 “qualifying jobs.” In the contract the company eventually signed with Austin ISD, HP only agreed to create 25.

Under this program, qualifying jobs cannot be transferred from another part of the state or be created to replace previous employees.<sup>9</sup> Yet, Dow Chemical Co. stated in its application to Brazosport ISD that development of its new facility there would lead to the closure of an older plant in La Porte, Texas, which would eliminate 90 jobs. Dow reported that it would make “every effort” to reassign these workers within the company and create 10 new qualifying jobs in compliance with the law.

### **Who’s Watching?**

The economic development contracts that school districts have pursued with businesses contain a wide variety of contractual terms that theoretically can trigger penalties if they are not met. These penalties include recapture of all granted tax breaks as well as punitive fines. Yet no state agency tracks compliance and school districts do not appear to do so, either.

Development agreements analyzed by TPJ include clauses that allow the school district to request information from the business, including information on the number of jobs created. The agreements do not require any reporting from the business to the district. Requests for information from the school districts under the Public Information Act returned no records on any audits or follow-up documentation on whether the companies are meeting their obligations.

Brazosport ISD signed an agreement with Dow Chemical that went into effect in 2003. According to Business Services Director Michael Abild, the district has not gathered any data from the company on how it is complying with the terms of the agreement, including how many jobs have been created.

“From the school districts vantage point I don’t really see that we would be the enforcers of that,” Abild says. “It’s the state that created [this Act]. It’s really the state’s initiative to encourage economic growth and I think it’s primarily the state that would have a greater interest in compliance with the agreements.”

But, no one in the state is charged with ensuring that businesses are complying with the agreements. The state isn’t even tracking how many of the agreements have been signed. The public is largely held in the dark on the impact and the cost of these tax break agreements. It is a cost to the state that can only be generally estimated until the state collects data on which agreements have been signed, the value of the tax break and what the businesses promised in return for their savings.

Statutes in Texas law indicate that two state agencies should have some access to information on the status of tax break agreements under the Act, but neither agency has records. The Texas Tax Code<sup>10</sup> states that local appraisal districts should send annual reports to the governor’s Economic Development office listing the real property value and the value with the tax break for properties with an HB 1200 agreement. The governor’s office collected this list for 2002, but has no further records. Krista Moody, a spokesperson for the governor’s office, says that although the law says records should be sent to the governor’s office, it does not require the governor’s office to maintain the records or to compel the local appraisers to make their annual reports.

The Texas Administrative Code<sup>11</sup> states that the school district is supposed to provide written notice to the Comptroller if it approves an application for the tax break. The Comptroller’s office says that most districts have not provided notice. The Comptroller’s office has not drafted any rules dealing with collecting information about the tax break agreements, despite the agency’s responsibility for providing revenue and expenditure estimates for the state.

A bill passed this session, HB 2994, requires the Comptroller to prepare a report before each legislative session that provides information about the agreements including which ones have been signed, the value of the tax break and the number of jobs created. In response to the bill, the Comptroller’s office is now in the process of drafting rules to gather more information about these agreements.

While neither local nor state governments are tracking these agreements, school districts are using them to manipulate the state’s school finance equity system.

### **Robbing “Robin Hood”**

Although local and state governments have yet to monitor compliance with these agreements, the resulting tax cuts are already beginning to skew the state’s system to impose some equity on the financing of public schools. Texas school districts are heavily funded by local property taxes. This revenue is subject to the state’s school finance equity program, also known as “Robin Hood.” Under Robin Hood rules, property-wealthy

districts must redistribute some of their wealth to property-poor districts. Money subject to Robin Hood goes into the state’s Foundation School Program.

Major new business investments in property-wealthy districts generally increase the amount of revenue that these districts must surrender to poorer districts. Conversely, major investments in property-poor districts decrease the aid that those districts receive from the state’s Foundation School Program.

Under HB 1200, the value of the tax break is not counted in the district’s wealth, allowing the district to largely avoid any changes in their school finance formulas as a result of new development in the district.

Michael Abild, business services director for Brazosport ISD, says that when the full value of a new investment project hits the tax roll in his property-wealthy districts it forces the district to increase its payments to the state for redistribution to poorer districts. “If you don’t sign the agreement they’re going to build a project and most of the taxes that would be collected on the project would be sent back to the state,” he explains.

In property-poor districts, HB 1200 agreements allow the district to continue to receive a higher level of state aid despite the increased property value in their district.

The Texas Tax Code states that this program was designed to encourage large-scale development, especially in school districts that have a tax base that is lower than the state average.<sup>12</sup> However, TPJ’s analysis of tax break applications found that the districts deemed property-wealthy under Robin Hood account for 75 percent of the estimated value of the tax breaks.

**Property-Rich School Districts  
Seek Most of the Tax Breaks**

<b>District Status</b>	<b>Estimated Annual Value of Tax Breaks</b>	<b>No. of Applications</b>
Property-Rich Districts	\$131,779,170	36
Property-Poor Districts	\$41,291,334	20
<b>TOTALS:</b>	<b>\$173,070,504</b>	<b>56</b>

Most of the agreements that TPJ reviewed revealed that the school districts would receive some sort of kickback from the business to compensate them for part of their lost property-tax revenues. Some businesses have agreed to give the school district a cut of their tax savings in the form of a one-time, lump-sum payment. Other businesses have agreed to give a percentage of the company’s tax savings. Often worth millions of dollars over the course of the agreements, these payments are not subject to Robin-Hood redistribution.

For example, Austin ISD has signed two tax break agreements. In one, Home Depot agreed to a one-time \$400,000 payment. The application Home Depot provided to the

comptroller suggests that the company could save \$2.4 million a year over the course of the agreement. The company also agreed to build two playgrounds, provide staff support, create two student intern positions and provide some phone and computer equipment to the district. In the other contract, Hewlett-Packard agreed to pay the district 15 percent of its net tax savings each year. Hewlett-Packard also signed a similar agreement with property-rich Round Rock ISD.

Some agreements negotiate a kickback to the district of up to 50 percent of the company's tax savings. Port Arthur ISD has signed three tax break agreements, all of which secured the district 50 percent of the businesses' net tax savings. The district signed two agreements with Premcor Corp. (in 2002 and 2004) and one agreement with Praxair. In the 2004 Premcor agreement, the company estimated that it will make payments in lieu of taxation to the district of \$1.3 million each year from 2008 through 2015. ATOFINA Chemicals, Inc. also agreed to pay 50 percent of its tax savings to Beaumont ISD.

These businesses are agreeing to develop in the area with a net tax break of 50 percent less than the total reduction in school property taxes. These deals could be signed at half the cost to the state. Instead, school districts are using the agreements to ramp up their own budgets without having to share the income with the state.

Wayne Pierce, executive director of the Equity Center, an organization of mid- to low-wealth Texas school districts, says that while the tax break agreements may help some districts, it is not an effective solution to the state's school finance problems. "We can certainly understand why a school district would welcome these arrangements because virtually all of them are significantly under-funded under our current system," Pierce says. "However, as far as a school finance solution goes, this is comparable to giving polio vaccine to every tenth child when we know the other nine need it just as badly."

The tax breaks are designed to encourage economic growth and job creation, but are taking away dollars from the one state program that is the basis for all state growth – the education of the state's children. These tax breaks may be working in opposition to the original goals of the program, says Greg LeRoy. "From a purely hard nosed corporate view, the number one site location advantage in trying to recruit companies to come to an area is a skilled labor force," he says. "You don't get a lot of skilled workers by de-funding your k-12 public school system."

This law creates loopholes that allow major corporations such as Exxon Mobil and Dow Chemical to dodge payments of millions of dollars in taxes to Texas schools. Yet nobody is assessing the costs or benefits of this law or monitoring whether companies comply with the terms of their generous tax breaks. School districts with little expertise in fomenting economic development are entering into costly agreements that force other taxpayers to subsidize wealthy businesses by bridging the resulting gap in school funding.

“These tax-break incentives come at a significant cost to the state and that cost must be paid by other taxpayers,” says Pierce, of the Equity Center. “So, the question to be answered is just how effective are these tax-break incentives in bringing new business to Texas? We already know the state can achieve the same objectives with less money [because of the kickbacks]. How many companies would do the same things regardless of whether these breaks are available?”

*Some will rob you with a fountain pen. – Woodie Guthrie*

“Watch Your Assets” is a Texans for Public Justice project.  
Lauren Reinlie, Project Director

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<sup>1</sup> Numbers derived from the Texas Comptroller of Public Accounts’ annual Property Tax Study.

<sup>2</sup> The Comptroller reports that it has endorsed 56 applications. Many of these applications have been signed into agreements, but the Comptroller does not track this information. The six agreements that are already affecting property tax revenue were signed at least two years ago and the businesses have already completed their two-year qualifying time period.

<sup>3</sup> “Where Did All the Money Go? School Property Tax Abatements under HB 1200 (2001),” Center for Public Policy Priorities. April 10, 2007. <http://www.cppp.org/research.php?aid=652> Data from the Comptroller’s Tax Exemptions & Tax Incidence study, February 2007, and unpublished estimates from the Comptroller’s office.

<sup>4</sup> Tax break recipients Dow Chemical, Toyota, and Exxon Mobil have all contributed to Brimer’s campaign account since 2001.

<sup>5</sup> Application list as of May 2007. This does not include estimates of the cost of tax credits paid to the companies to reimburse them for taxes paid in the first two years of the agreements. Calculations of the estimated value of the tax breaks were made by subtracting the limited appraised value of the property from the qualified investment then multiplying by the 2006 school district M&O tax rates.

<sup>6</sup> As determined by the Texas Workforce Commission

<sup>7</sup> HB 1470, Section 3 says school districts may waive the new jobs creation requirement and approve an application if the governing body makes a finding that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility.

<sup>8</sup> “Where Did All the Money Go? School Property Tax Abatements under HB 1200 (2001),” Center for Public Policy Priorities. April 10, 2007.

<sup>9</sup> Texas Administrative Code §9.107 (b)(5).

<sup>10</sup> Texas Tax Code §23.03.

<sup>11</sup> Texas Administrative Code, Title 34, Sec. 9.107(f)(3)

<sup>12</sup> Texas Tax Code § 313.003.

Appendix:

Estimated Value of School District Tax Breaks

<b>Tax Break Applicant</b>	<b>School District</b>	<b>Estimated Value of Tax Break (Per Year)</b>
Motiva Enterprises	Port Arthur ISD	\$35,894,000
Goat Mountain Wind	Sterling City ISD	\$10,823,000
FPL Energy Horse Hollow Wind*	Blackwell CISD	\$8,083,000
Mesquite Wind*	Clyde Consolidated ISD	\$7,740,500
Toyota Motor Manufacturing Texas*	Southwest ISD	\$7,713,100
Ingleside Energy Center	Ingleside ISD	\$7,535,000
Premcor Corp.*	Port Arthur ISD	\$7,124,000
ExxonMobil*	Sabine Pass ISD	\$6,439,000
Premcor Corp.*	Port Arthur ISD	\$5,343,000
Formosa Plastics Corp. Texas	Calhoun County ISD	\$4,798,530
Hewlett-Packard Co.*	Klein ISD	\$4,795,000
Sweetwater Wind Power*	Highland ISD	\$3,821,571
ConocoPhillips Co.*	Plemons-Stinnett-Phillips CISD	\$3,468,420
Sabina Petrochemicals*	Port Neches-Groves ISD	\$3,425,000
Buffalo Gap Wind Farms & AES SeaWest*	Blackwell CISD	\$3,233,200
Hewlett-Packard Co.*	Austin ISD	\$2,890,700
Dow Chemical Co.*	Brazosport ISD	\$2,861,706
FPL Energy Horse Hollow Wind*	Jim Ned ISD	\$2,825,720
Hackberry Wind*	Albany ISD	\$2,788,305
Home Depot U.S.A.*	Austin ISD	\$2,493,400
Samsung Austin Semiconductor*	Manor ISD	\$2,438,800
Hilmar Cheese Co.*	Dalhart ISD	\$2,325,210
ConocoPhillips Co.*	Sweeny ISD	\$2,260,500
ExxonMobil*	Beaumont ISD	\$2,227,000
Sweetwater Wind Power*	Highland ISD	\$2,089,698
Cielo Wind Power	Rankin ISD	\$1,940,680
Hewlett-Packard Co.*	Round Rock ISD	\$1,898,540
BASF Corp.*	Brazosport ISD	\$1,596,660
Airtricity Wind Farms	Roscoe ISD	\$1,589,200
Sweetwater Wind Power*	Blackwell CISD	\$1,520,700
JD Wind 1-2-3-4 (Great Plains Windpower)	Gruver ISD	\$1,463,000
Panhandle Energies of Dumas	Sunray ISD	\$1,433,586
Plainview BioEnergy*	Plainview ISD	\$1,397,400
Sweetwater Wind Power*	Sweetwater ISD	\$1,315,200
Airtricity Wind Farms	Paducah ISD	\$1,177,110
Airtricity Wind Farms*	Sterling City ISD	\$1,054,900
CPV Wind Trew Ranch	Clarendon CISD	\$1,044,389
Wildorado Wind*	Wildorado ISD	\$945,300
Airtricity Wind Farms	Loraine ISD	\$835,700
Scurry County Wind	Snyder ISD	\$822,000
ATOFINA Chemicals*	Beaumont ISD	\$746,700
Cielo Wind Power	Iraan-Sheffield ISD	\$685,000

Texas Instruments*	Plano ISD	\$665,000
Cielo Wind Power	Borden County ISD	\$658,400
Airtricity Wind Farms	Highland ISD	\$644,085
Cielo Wind Power	Crockett County CCSD	\$616,500
Praxair*	Port Arthur ISD	\$602,800
Silver Star Power Partners	Huckabay ISD	\$589,100
Scurry County Wind	Hermleigh ISD	\$575,400
WKN Texas*	Hermleigh ISD	\$561,700
Wildorado Wind*	Vega ISD	\$332,800
DG Windpower	Sunray ISD	\$308,154
Air Liquide Large Industries U.S.	Brazosport ISD	\$245,640
Silver Star Power Partners	Ranger ISD	\$232,900
Corpus Christi Interests (Cheniere Energy)*	Gregory-Portland ISD	\$68,500
American Marazzi Tile*	Sunnyvale ISD	\$66,100
<b>TOTAL:</b>		<b>\$173,070,504</b>

\*Agreements have been signed.

Note: The table above uses M&O tax rates for 2006. Estimates are based on applications filed with the Comptroller's office.