



Open for Business

**An Examination of Economic Development
Transparency in Texas**

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EXECUTIVE SUMMARY

Government transparency is a vital part of an inclusive and well-functioning democracy, especially when it comes to how our tax dollars are spent. At all levels – federal, state, and local – governments spending and revenue collection should serve the public benefit. Therefore, it is our right to have the necessary access to information that allows us to be knowledgeable citizens, voters, and participants in our government. This includes information about how our state is spending its' money. Transparency of the public purse matters because it promotes fiscal responsibility, bolsters public confidence in government and deters corruption.

This report uses public records requests to examine unreported information about Texas' two largest economic develop subsidy programs: The Texas Enterprise Fund (TEF) and the Texas Emerging Technology Fund (TETF), which together dispensed almost a billion dollars in subsidies, mostly to private companies. It examines the degree of transparency at these programs and whether the information they provide online allows Texans to hold these programs accountable for their use of tax dollars. It also highlights specific opportunities available to increase transparency and accountability among economic development funds and incentives generally.

Unfortunately, these programs fail to provide vital information that is necessary to evaluate their performance. The TEF, which has dispensed more than \$487 million in subsidies to date to private companies since its creation in 2003, has improved its transparency over time by providing a variety of online information about subsidy projects, but accountability for results is severely hampered by two problems. Firstly, an "amendment" process that changes the benchmarks midway through a project and prevents taxpayers, lawmakers or budget watchdogs from determining whether subsidized projects are meeting their original benchmarks. Secondly, the information is only available across a numerous scattered reports and documents, rather than provided in a searchable and accessible format.

The TexPIRG Education Fund's attempt to overcome these hurdles was hindered by the actions of several companies that blocked our requests for public records. Legal Zoom, General Electric Company (GE) and Caterpillar all successfully petitioned to prevent us from receiving annual compliance verification reports, citing concerns on consolidated financials including employee salary and wage data.

Nonetheless, several examples make clear that public accountability is hindered by an "amendment" process that is poorly disclosed to the public. The initial goals of subsidy outlays are prominently publicized through press releases proclaiming the benefits that those subsidies will yield; but later on companies often quietly renegotiate those agreements. The compliance documents that can be found on the program's website show only whether the company met those amended goals. The public hears only about big goals, and later that the goals have usually been met, but not that the goalposts have been changed mid-way through.

The Texas Emerging Technology Fund (TETF) suffers from similar accountability problems. The largest component of this fund is the Commercialization Awards sub-chapter, which has given over \$200 million to start-up companies and consortia with the hope that these entities will succeed and repay the state

for its seed funding. Essentially, the program is betting on certain companies to be winners, and their growth to contribute to Texas' prosperity to a degree that exceeds spending this money on other public programs or leaving it in the hands of ordinary taxpayers. To evaluate the program it is essential to know when the state has been able to recoup its start-up funds. Unfortunately, for \$22.6 million which has been given to companies that are no longer in operation, no information is provided is available on whether funds were repaid to the state as requested by the Office of the Governor.

Worse still, the Office of the Governor has issued exceptions to the normal public records process to block attempts to discover this information. The report describes three such examples.

Texans deserve full transparency when the state gives tax dollars to individual private entities as economic development subsidies. Public scrutiny is vital to ensure that such funds are well spent. Unfortunately, for Texas' largest economic development subsidy programs, serious shortcoming and actions by the Office of the Governor have prevented public accountability for use of these funds.

In order to improve transparency of economic development subsidies, the state of Texas should:

- Provide recipient-specific details on the benefits – both projected and actual – of all economic development grants. This includes the number of projected jobs in the original contract, any amended job projects and actual jobs created. Without this information, watchdog groups and concerned citizens cannot ensure that taxpayers are getting their money's worth from the specific subsidy programs.
- Provide downloadable versions of all original contracts, contract amendments, verification reports and termination agreements with only truly proprietary information redacted.
- Provide details and status of funds recouped, in part or whole, from companies that fail to deliver on the agreed-upon public benefits laid out in subsidy agreements.
- Information for all economic development subsidy programs should be housed on www.texastransparency.org so that users can access a comprehensive, one-stop, one-click searchable and downloadable dataset at the recipient level. Without all of the information available in one user-friendly and accessible location, concerned citizens and policy makers face unnecessary obstacles in their ability to evaluate the success of specific programs.
- Texas should also provide detailed check-book level spending on *all* economic development programs, including adding detailed information for the Film Tax Credit program and the Skills Development Fund. Texans deserve to know how much is spent annually on every program, and who receives this money.

Thanks to Comptroller Susan Combs and numerous transparency advocates, including the Texas Public Policy Foundation, Good Jobs First and Texans for Public Justice, Texas has been a leader in online transparency – receiving an A- in TexPIRG Education Fund's 2014 Follow the Money report card that ranks all 50 states in how well they provide public access to data on state spending.

One area where transparency is particularly important is with subsidies to private companies that were not individually approved or subject to scrutiny by the legislature. In Texas, Governor Perry and the Legislature have been aggressive about spending large sums on economic development subsidies, but that enthusiasm has not been matched with top-flight transparency to show Texans what they are getting for these expenditures.

This report, TexPIRG Education Fund's first in-depth evaluation of the state of Texas' economic development spending transparency, finds that while Texas has made significant progress toward comprehensive, one-stop, one-click transparency and accountability for state government spending, the state still has a long road ahead to provide taxpayers with the information they need to ensure that expenditures given to private entities through economic development spending are providing the agreed upon public benefit and are an effective and efficient use of tax dollars.

INTRODUCTION

“[W]e might hope to see the finances of the Union as clear and intelligible as a merchant’s books, so that every member of Congress, and every man of any mind in the Union, should be able to comprehend them, to investigate abuses, and consequently to control them.”

Thomas Jefferson recognized that government finances must be transparent if citizens in a democracy are to exercise their right to participate in decisions about how common resources are spent. After years of rule by monarch, Jefferson wanted budget transparency to be an important virtue of America.

More than 200 years after Jefferson’s ideals shaped the fledgling United States, Americans continue to adhere to the principle that, when it comes to government spending, citizens should be able to follow the money.

We now have tools at our disposal of which Jefferson never could have dreamed – tools such as state government transparency websites that increasingly help Americans keep an eye on government finances to improve spending, weed out wasteful outlays or subsidies to special interests, and can be used to hold contractors responsible for their performance.

Although Texas, through the work of Comptroller Susan Combs and numerous transparency advocates, has consistently been recognized as a leader in providing taxpayers with online and easily accessible information on a number of public expenditures, we must work to distinguish ourselves in the area of economic development because of the state’s particularly aggressive economic development spending.

In 2011, the Legislature appropriated \$67.6 million for the Texas Enterprise Fund, including \$20 million in General Revenue Funds and \$47.6 million in estimated revenue, estimated interest earnings, and unspent appropriations carried forward from fiscal year 2009.¹ However, economic development appropriations came alongside major cuts to education, including completely eliminating \$208.6 million in funding for Pre-Kindergarten expansion grants.²

Whatever the merits or downsides of these special business subsidies, they operate outside of the traditional checks and balances of the legislature. Once created, the expenditures do not appear as a line item on the Texas budget and do not come up for regular review, except perhaps in periodic sunsets or auditor reviews. For many of these programs, budget makers don’t even know what they will cost beforehand. For all these reasons, economic development subsidies should be subject to the highest levels of online transparency, to ensure public scrutiny that might compensate for the lack of these other forms of government accountability.

Unfortunately, economic development expenditures have been subject to less rather than more public transparency than direct spending. Without easily accessible online transparency, these subsidy programs often go without the necessary scrutiny to ensure that tax dollars are being spent in an

¹ Legislative Budget Board. 2010-2011 Fiscal Size Up

http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp_2010-11.pdf

² Center for Public Policy Priorities. (2013). *Sizing Up The 2014-15 Texas Budget: Public Education*

http://forabettertexas.org/images/ED_2013_08_PP_publicedbudget.pdf

efficient and effective manner, and that tax payers are getting the expected public benefit from investments made in private entities. Additionally, lawmakers – the very people responsible for crafting our state budget and determining how to collect and allocate state tax dollars – cannot access adequate information about how successful or unsuccessful a particular subsidy program has been in order to decide whether those programs should be cut or expanded.

The Texas Enterprise Fund (TEF) and the Texas Emerging Technology Fund (TETF), two of the nations' largest economic development subsidy funds, have granted nearly a billion dollars to private entities since their inception – but fail to provide policy makers, citizen watch dogs or tax payers with the necessary information to evaluate the appropriateness or effectiveness of these public investments. Specifically, the TEF has awarded more than \$487 million³ and the TETF has awarded more than \$424 million⁴.

These funds were created by the Office of the Governor and the Legislature to help attract businesses to the state, generating jobs, developing new in-state technologies or fostering investments in public universities.⁵ However, the current state of transparency with respect to economic development spending in Texas makes it nearly impossible to determine whether these economic development funds are achieving their stated goals or whether they actually amount to a worthwhile public investment.

This report documents the current state of transparency with respect to economic development spending in Texas and suggests simple improvements to enable evaluation of economic development spending to determine the extent that these expenditures benefit the public and whether recipients of subsidies deliver on promised results.

In the current time, making information readily accessible to the public means posting it online in an accessible format. Easily accessible online transparency promotes fiscal responsibility, bolsters public confidence in government and deters corruption. By continuing to improve online access to information about economic development expenditures and other government spending to the public, Texas can ensure that every citizen has the tools to evaluate and speak out about how his or her tax dollars are spent.

In addition to making government more transparent and accountable to the public, online reporting avoids the otherwise cumbersome and time-consuming process inherent in the public record request process. For the purposes of this report, TexPIRG Education Fund was forced to turn to the public records request in an attempt to supplement the shortcomings of the state's online transparency resources.

THE STATE OF TRANSPARENCY IN TEXAS

Practically speaking, public information is not truly accessible unless it is online. Government spending transparency websites give citizens and government officials the ability to monitor many aspects of state

³ http://governor.state.tx.us/files/ecodev/TEF_Lege_Report.pdf Summary of Program Activity, All Years to Date

⁴ http://governor.state.tx.us/files/ecodev/etf/TETF_Report_FY2013.pdf Table 1

⁵ http://governor.state.tx.us/ecodev/financial_resources/texas_enterprise_fund/

spending – saving money, preventing corruption, reducing potential waste and abuse of taxpayer dollars, and encouraging the achievement of a wide variety of public policy goals.

Because of the work of Comptroller Susan Combs and the Texas Transparency web portal, Texans have some of the best access to information on state spending as residents in any state in the nation. Our transparency website has helped the government find ways to save money and meet other public policy goals in a number of ways. For instance:

- Better contract negotiation and increased competition – Using information uncovered through the transparency website, the state government was able to renegotiate its copier machine lease to save \$33 million over three years. The state was also able to negotiate prison food contracts to save \$15.2 million.⁶
- Identification and elimination of inefficient spending - The comptroller’s office used the transparency website over the first two years it was launched to save \$4.8 million from more efficient administration.⁷ For example, the office avoided spending \$328,000 on a new mail sorter by instead setting up separate post office boxes to receive different types of mail.⁸

In addition to the many public benefits Texas taxpayers see from increased online transparency, our transparency website comes with a surprisingly low price tag. It cost the state a mere \$310,000 in start-up costs and the annual operating costs are covered through our existing budget.⁹

Furthermore, transparency websites are important and useful to residents. Residents and watchdog groups use the tools and access the information available on transparency websites. For calendar year 2013, [the Texas Transparency website](#) received more than 560,000 page views. As of July 2014, the site has already received more than 605,244 for the 2014 calendar year.¹⁰

A survey from the Association of Government Accountants also shows the importance of spending transparency to the public. An overwhelming majority – 91 percent – of Americans believe that they are entitled to transparent financial management information from their government. Approximately three-quarters of respondents said that it is personally very or extremely important to have financial management information about their state government available to them. Nearly one-third of respondents have searched the Internet for information about how their state government generates and spends taxpayer dollars.¹¹

⁶ Beth Hallmark, Office of the Texas Comptroller of Public Accounts, personal communication, 11 February 2011.

⁷ Tracy Loew, “States Put Spending Details Online; Public Can Check Where Their Taxes Go,” *USA Today*, 23 February 2009.

⁸ *Ibid.*

⁹ Beth Hallmark, Office of the Texas State Comptroller, personal communication, 27 January 2012

¹⁰ Beth Hallmark, Office of the Texas State Comptroller, personal communication, 2 October 2014

¹¹ Harris Interactive, *AGA 2009 Tracking Survey: Perceptions of Governmental Financial Management*, 29 December 2009 (prepared for the Association of Government Accountants).

Transparent Programs Give Users Detailed Information on Government Expenditures

Transparency websites offer spending information that is broad and detailed, and that helps citizens answer three key questions: how much is the government spending on particular goods and services, which companies receive public funds for these goods and services, and what is the public getting for its money? Topflight transparency websites empower citizens to answer those questions for every major category of state spending, including economic development programs.

State and local governments allocate an estimated \$50 billion each year to private entities in the form of economic development subsidies.¹² These incentives – which can take the form of grants, loans, tax credits and tax exemptions – are awarded with the intent to create jobs and spur growth, yet many governments still fail to disclose adequate company-specific information on these expenditures and their outcomes.

When information is lacking on whether companies deliver on promised benefits, state officials cannot hold them accountable or make fully informed decisions to improve economic development policies in the future.

Transparency programs that meet current standards for best practices offer information on government expenditures that is comprehensive, one-stop and one-click.

Comprehensive:

A comprehensive transparency website should be a user-friendly web portal that provides residents with the ability to search detailed information about government contracts, spending, subsidies and tax expenditures for all government entities. Citizens should have access to all of the facts regarding government spending rather than only the bits and pieces of information released by officials wishing to boost their own public image. Budget, expenditure, revenue, tax, and economic development program information should be available for the public to view. A comprehensive website allows for greater public participation in government spending activity, giving citizens the tools to evaluate the actions of their officials and the ability to voice their opinions regarding the use of tax dollars.

One-Stop:

Transparency websites in leading states offer a single portal from which citizens can search all government expenditures. One-stop transparency is particularly important for public oversight of economic development incentive subsidies. Subsidies come in a dizzying variety of forms—including direct cash transfers, loans, reductions of taxes, and contributions of property or infrastructure—and

¹² In 2002 a University of Iowa study estimated a total of \$40 to \$50 billion in state investment subsidies were distributed, a figure that has surely grown with the increasing use of these incentives. See Alan Peters and Peter Fisher, “The Failures of Economic Development Incentives,” *Journal of the American Planning Association* 70(1): 28, 2004; Massachusetts’ economic development tax expenditures, for example, cost the state nearly \$1.5 billion a year: Bruce Mohl, “Subsidizing the Stars,” *CommonWealth*, Spring 2008. During its decades of expansion, Wal-Mart alone has received over \$1 billion in state and local subsidies: Barnaby Feder, “Wal-Mart’s Expansion Aided by Many Taxpayer Subsidies,” *New York Times*, 24 May 2004.

are administered by a variety of government agencies. Few people already know the range of these programs or which agency's website they should search to find them. With one-stop transparency, residents and public officials can access comprehensive information on subsidies, direct spending, contracts, and tax expenditures in a single location, thus empowering closer scrutiny of government spending.

One-Click Searchable and Downloadable:

Transparent information is only as useful as it is accessible, which means easily searchable.

Transparency websites should offer a range of search and sort functions that allow residents to navigate complex expenditure data with a single click of the mouse. A transparency portal should allow citizens to search data with a single query, make directed keyword and field searches, browse common-sense categories, or sort data on government spending by recipient, amount, granting agency, or keyword.

Citizens who want to dig deeper into government spending patterns should also have the ability to download data in order to conduct offline analyses. Downloading whole datasets enables citizens to see trends or understand total spending amounts that might otherwise be lost in a sea of unrelated data.

Texans need more information to evaluate the effectiveness of economic development spending

Although Texas ranks among the top of the nation with respect to transparency of traditional state agency spending, the Office of the Governor is far from providing elected officials, watch dogs or tax payers the information they need to fully evaluate the success or shortcomings of economic development programs. Taxpayers in Texas do not have access to comprehensive, one stop and one-click searchable and downloadable website to evaluate the efficiency and effectiveness of Texas' major economic development funds.

Combined, the Texas Enterprise Fund and Texas Emerging Technology Fund have cost taxpayers nearly a billion dollars since their inception. With such a large sum of public dollars being given to private entities, it is essential to provide the utmost transparency and accessibility to information to ensure that tax payer dollars are going to be used effectively, result in the tangible promised public benefits and are free of corruption and political favoritism.

The Texas Enterprise Fund

The Texas Enterprise Fund is the nation's largest "deal-closing" economic development fund— having awarded more than \$487 million since its inception during the 2003 legislative session.¹³ According to the Office of the Governor, projects eligible for TEF grants must meet several primary measures in order to be considered, including competition with another state or country for the project, significant projected job creation, above-average projected wages, substantial capital investment by the company,

¹³ TEXAS ENTERPRISE FUND, 2013 Legislative Report, Reporting on Period January 2011 - December 2012
http://governor.state.tx.us/files/ecodev/TEF_Lege_Report.pdf

and community involvement in the form of local economic incentive offers.¹⁴ As of June 20, 2014, the TEF has funded 122 projects across the state – with the majority in Texas’ major metropolitan areas.¹⁵

The TEF, and all disclosures relating to the fund, are managed by the Office of the Governor Department of Economic Development and Tourism. Through this department, the Office of the Governor makes available online a set of documents that includes PDF versions of [Legislative Reports](#), [TEF Award Listing - All Projects to Date](#), [TEF Award Location Maps](#) and the TEF application.¹⁶

The Office of the Comptroller provide a link on Texas Transparency website to the Governor’s reporting on the TEF and lists the total expenditures, incoming revenue and cash balance for the TEF in the Comptroller’s annual Cash Report, which reports on the state’s total expenditures and revenue for each year.¹⁷ But the Comptroller’s Office does not have access to data about particular TEF subsidy payments or the agreements with subsidy recipients. **The Office of the Governor site provides certain details about particular subsidy outlays, but fails to provide an accessible format and provides only incomplete information that makes it impossible to evaluate whether subsidies are performing well in achieving public goals.**

In an assortment of legislative reports, project-to date reports and award location maps found on several different sites and in several different formats at the Office of the Governor Department of Economic Development and Tourism website, the following **information is currently available about the TEF:**

- Total Amount of grants given per year
- Number of projects Funded Per Year
- Number of applications received, percent funded, percent rejected
- Number of projects pending
- For individual projects funded by the TEF, documents also describe each project’s:
 - Industry Sector
 - Location of project
 - Funded Project Origins (Headquarters locations)
 - Date of project contract
 - Award amount
 - Direct Jobs intended
 - Average and median wage of Jobs
 - Projected state and local revenues to be generated
 - Amount of local incentives provided
 - Capital investment per project by recipient
- Estimate Total Jobs

¹⁴ Ibid.

¹⁵ TEXAS ENTERPRISE FUND, AWARD LISTING ALL PROJECTS TO DATE as of June 30, 2014
http://www.governor.state.tx.us/files/ecodev/TEF_Listing.pdf

¹⁶ http://governor.state.tx.us/ecodev/financial_resources/texas_enterprise_fund/

¹⁷ http://www.texas Transparency.org/State_Finance/Budget_Finance/Reports/Cash_Report/

- Amount of Liquidated Damages (clawbacks)
- Amount of “Other Repayments”
- List of Projects with Contract Amendments
- List of Terminated Projects

the above information is certainly important for evaluating the intended outcomes of TEF projects, it also fails to provide the necessary information to determine whether the projects in question were actually meeting their goals and providing the intended public benefit.

Information not available online for TEF:

- Original contracts between the Office of the Governor and Company (original projected public benefit, contract terms, etc.)
- Annual Compliance and Verification reports from Company
- Details of Local Incentives such as city and county investments
- Details Regarding Liquidated Damages (Clawbacks)
- Amendments to contracts –Contract details are no longer relevant when they have been superseded by amendments to the original agreements. While the Office of the Governor lists the entities whose contracts have been amended, there are no available details with respect to the amendments and no details given on the originally agreed upon terms of the grant.

The available TEF information is especially insufficient given the practice of “*amendments*” to the original contract agreements. According to the 2013 Office of the Governor Legislative Report, from January 2011 to December 2012, TEF agreed to amend the original contact agreements with ten TEF grant recipients. It is doubly problematic that no record of this amendment process is kept.

- (1) Firstly, the process potentially allows recipients of state subsidies to avoid accountability for meeting prior commitments by requesting that the agency simply redefine the goals. Companies and state departments issue press releases and hold public events to tout the ambitious results that will be achieved by economic development expenditures, but these goals later get changed with little fanfare and no record of the original goals. At worst, this can be like moving the goalposts in the middle of a football game when a team is unhappy with its field position. Agencies don’t have much incentive to resist these efforts because they will be seen as failing to meet expectations when companies fail to meet contracted goals. There is not enough information publicly available to ascertain how doggedly the Office of the Governor defends the public interests in these negotiations.
- (2) Secondly, disclosing only the amended agreement without disclosing the original terms of an economic development contract obscures whether state subsidy programs have been accurate in predicting the performance of companies they subsidize. The nature of economic development subsidies is essentially about trying to pick winners. The state effectively places a bet on the success of a company and hopes that success will translate into job creation and investment in the economy. Amending these bets part way through a contract without disclosing the original terms makes very difficult to judge how well the state picks winners. To continue with the football analogy, it is like trying to evaluate the

success of somebody's football wagers without knowing when some bets were changed in the middle.

In order to understand more about the information behind the amendment of subsidy agreements, TexPIRG Education Fund filed several open records request with the state. The Open Records Division of the Office of the Attorney General issues rulings and decisions that determine whether specific information is open to the public under the Public Information Act and any other applicable laws.¹⁸ Under Texas law¹⁹, public records include information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental purpose.

The law is written to be construed liberally in favor of granting the public access to information, however, private economic development grantees are routinely successful in blocking access to information, citing proprietary claim over information relating to consolidated financial statements, including wages, debt ratios, cash flow and operating expenses.

For the following three companies, we were able to obtain some information through the open record request process that was not otherwise publically available. While we were unable to access all of the requested information for every TEF grant recipient, the following three examples highlight the need for greater transparency and accountability.

General Electric Company –

On May 12, 2011 the Office of the Governor entered into a contract with General Electric Company (GE) – agreeing to provide the company with \$4.2 million in TEF grant money in exchange for GE committing to create a total of at least 775 employment positions by December 31, 2014 and maintaining those positions through December 31, 2022.

In a press release issued by the Office of the Governor the same day the contract was signed, GE Chairman and CEO Jeffrey Immelt said “this Texas Enterprise Fund investment will help create a new state-of-the-art plant in Fort Worth that will produce the world's most advanced locomotives and transportation products, expand our service and repair capability, and create hundreds of new high-tech manufacturing jobs.”²⁰ The press release stated that the state would invest \$4.2 million through the TEF in GE Transportation for the creation of a locomotive manufacturing facility in Fort Worth. This investment would allegedly create 775 new, high-tech manufacturing jobs and up to \$96 million in capital investment.

However, the Office of the Governor's 2013 Legislative Report lists GE as one of the ten companies with amended contracts between 2011 and 2012. Unfortunately, the legislative report gives no details about the nature of the original contract or the details of the amendments.

¹⁸ <https://www.texasattorneygeneral.gov/open/>

¹⁹ Acts 2009, 81st Leg., R.S., Ch. 1377 (S.B. 1182), Sec. 12, eff. September 1, 2009.

²⁰ <http://governor.state.tx.us/news/press-release/16106/>

TexPIRG Education Fund obtained the original contract and the amended contract through a public records request, submitted in July 2014. According to the amended contract, the state would provide \$2.1 million instead of \$4.2 million and GE would in turn create 330 jobs instead of the originally agreed upon 775 jobs.

	Original Contract	Amended Contract
Grant Amount	\$4,200,000	\$2,100,000
Jobs Created	775	300

Ultimately, the state entered into an agreement with GE at a rate of \$5,419.35 per job, but due to amendments actually ended up providing GE \$6,363.63 per job. Not only was the investment amended to provide less “bang for the buck” with for the public, no additional press release was issued to reflect the drop in over 50 percent of the jobs. Because of the lack of transparency around the TEF investments, it would be nearly impossible to compare the original contract terms versus the amended terms without submitting a public records request.

Grifols, Inc. –

On October 15, 2009 the TEF, entered into an economic development agreement with Grifols, a corporation that produces plasma-derived biopharmaceutical products. According to the original contract, the TEF granted the company \$500,000. Grifols agreed to create 190 jobs in San Marcos, Texas by December 31, 2016 and maintain those employment positions until at least December 31, 2018.

In a press release dated June 30, 2009 Gov. Perry said. “This TEF investment will bring 190 jobs to San Marcos, while strengthening Texas’ biomedical sector and generating millions of dollars in capital investment in central Texas.” ²¹

Almost three years later, a very astute reader of the 2013 Legislative Report by the Office of the Governor might have noticed that Grifols, Inc. was listed as one of the ten TEF investments with amended contracts. But no details on the nature of the amendment were available in the legislative report or on the Office of the Governor’s website. Texas Public Interest Research Group was able to access both the original agreement and amended agreement through open records requests submitted to the Office of the Governor in July of 2014. According to the amended contract, signed December 28, 2012, TEF agreed to provide Grifols, Inc. with \$250,000 through cash grants instead of the original amount of \$500,000 and Grifols, Inc agreed to create 90 new jobs in San Marcos as opposed to the original terms of 190 jobs. In addition to reducing the job creation deliverables by more than half, Grifols, Inc. was also only required to maintain the 90 new positions until December 31, 2016 as opposed to December 31, 2018 – a reduction of two years.

	Original Contract	Amended Contract

²¹ <http://governor.state.tx.us/news/press-release/13363/>

Grant Amount	\$500,000	\$250,000
Jobs Created	190	90

Under the original contract, taxpayers would pay \$2,631.57 per job and would be guaranteed those jobs until at least December of 2018. Under the amended terms, taxpayers paid \$2,777.77 per job and were only guaranteed those jobs until December of 2016.

In amending the terms to be less favorable for the economy, the Office of the Governor chose not to issue a press release publicizing the new amended terms, leaving the information was completely unavailable through the normal process of online and accessed.

idX Corporation -

On February 28, 2011 the TEF entered into an agreement with idX, a company known for design, manufacture and installation of retail display features, for \$360,000 in order for idX to establish a new facility in Cuero, Texas and create at least 125 new full-time jobs. According to a press release available on the Office of the Governor’s website, Sen. Glenn Hegar said, “ I am confident that this Texas Enterprise Fund investment will lead to more opportunities for the area and only serve to bolster Texas' much envied status as one of the world's premiere homes for business. My hearty congratulations go out to idX and to Cuero, and I commend the Governor's Office for recognizing the tremendous benefit this project offers.”²²

idX Corp. was highlighted in the 2013 Legislative Report as creating 125 direct jobs and bringing more than \$1,321,604 into the Cuero community through sales and use taxes.

²² The Office of the Governor. (2011). Gov. Perry Announces TEF Investment Creating 125 Jobs in Cuero [Press release]. Retrieved from <http://governor.state.tx.us/news/press-release/15876/>

idX Corp.

*Cuero, Texas
Retail Store Fixtures Manufacturing*



Project Details

Date of Contract	February 28, 2011
Award amount	\$360,000
Direct Jobs	125 jobs
Average wage	\$32,000
Median wage*	\$32,000

Projected state and local government revenues to be generated within a 20-year economic model

Estimated at time of project application

Ad valorem taxes	\$758,045
Sales and use taxes	\$1,321,604
Fees*	\$1,660

**Reported by Company*

Local incentives

Estimated at time of project application based on information provided by local government.

Includes all local incentives (i.e. tax abatements, cash grants, etc)

Total	\$100,000
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However on February 26, 2014, idX and the state of Texas entered into an agreement to terminate the economic development contract nearly 3 years after the initial agreement was signed, citing idX's inability to meet the job targets pursuant to the initial agreement. At the time of the termination, the Office of the Governor had already disbursed \$125,000 to idX, and idX's job creation to date was valued at merely \$21,043. idX was required to repay \$8,076 in liquidated damages, pursuant to the initial agreement, and agreed to return the remaining \$108,591 to the state. The final repayments were made upon the termination of the award.

The Emerging Technology Fund

The Texas Emerging Technology Fund (TETF) is a \$485 million fund created by the Texas Legislature in 2005 at the governor's request and reauthorized in 2007, 2009, 2011 and 2013. As of 2013, the TETF has allocated nearly \$220 million in grant matching and research superiority funds to Texas universities and more than \$205 million to over 145 early stage companies.²³ According to the Office of the Governor, the mission of the TETF is to give Texas an advantage in research, development and commercialization of emerging technologies, and recruitment of scientists, researchers and innovators to Texas and help startup companies get off the ground quicker and attract high-tech jobs.²⁴

TETF provides funding through three established programs: Incentives for Commercialization Activities (Subchapter D), Research Award Matching (Subchapter E), and Acquisition of Research Superiority (Subchapter F). Commercialization Activities awards are provided to private companies to establish seed funding to bring new or enhanced technology into the marketplace. Research Award Matching grants are designed to create consortia which leverage universities, federal government grant programs,

²³ <http://governor.state.tx.us/ecodev/etf>

²⁴ Ibid

and industry. Acquisition of Research Superiority awards are grants to enable public institutions of higher education in Texas to recruit talented researchers.

Subchapter	Projects (#)	Total awarded (\$)	Follow-on funding (\$)
Subchapter D Commercialization	142	200,050,584	1,033,042,918
Regional Centers/Consortiums	12	9,590,807	8,973,243
Subchapter E Research Matching	14	124,654,578	429,428,626
Subchapter F Research Superiority	22	90,404,724	721,372,842
Total	190	424,700,693	2,192,817,629

Subchapter D Commercialization Grants account for 74% of TETF projects and make up nearly half of the funds distributed.²⁵ Since its inception, TETF had distributed \$200,050,584.00 to consortia under the Subchapter D Commercialization program. Commercialization awards are among the only grants given to private entities – though according to the Office of the Governor, there must be a collaboration between the company and a research institution.

The 2013 Texas Emerging Technology Fund Legislative Report provides a variety of detailed information about commercialization award recipients. The TETF, and all disclosures, are managed by the Office of the Governor Department of Economic Development and Tourism. Information available online includes PDF versions of [FY2011-FY2013 annual reports](#), [FY2014 Interim Report](#), [information on the TETF Advisory Committee](#) and [Enabling Legislation](#).²⁶

Although the Office of the Comptroller does provide links on www.texasransparency.org to the Governor’s reporting on the TETF, the recipient details are not available in a searchable and downloadable database like traditional state expenditures. However, like expenditures from the TEF, the expenditures from the TETF are listed on the Comptroller’s site in the state’s annual cash report.²⁷

Information currently available online for TETF Commercialization Grants:

- Award Recipient
- Project Descriptions
- Recipient Status
- Total Amount of Grants Given Per Year
- Number of Projects Funded Per Year
- University Collaboration

²⁵ http://governor.state.tx.us/files/ecodev/etf/TETF_Report_FY2013.pdf pg. 5

²⁶ <http://governor.state.tx.us/ecodev/etf>

²⁷ http://www.texasransparency.org/State_Finance/Budget_Finance/Reports/

- Industry Cluster
- Region
- Number of Jobs Created
- Intended Outcome Description
- Actual Outcome Description
- Valuation of Investments

While the TETF does provide a great deal of recipient-specific data, other kinds of important data are not available online to determine the efficiency and effectiveness of the start-up grant subsidies.

According to the Governor's FY2013 legislative report for the TETF – 17 private entities that received funding through subchapter D commercialization grants have ceased operation. When the government invests public money in start-up corporations, it is an inherently risky prospect. Therefore the highest level of transparency is necessary to ensure that the public can track the “bang for the buck” received from public outlays and to understand what went wrong when funds are not recouped. Unfortunately, TETF does not provide the information necessary to answer these questions. Taxpayers have no way of knowing whether [\\$22.6 million or 11.6percent](#) of funding from sub-chapter D the Texas Emerging Technology Fund was recouped after the start-up seized operation – money designed to provide incentives for commercialization of emerging technologies.

Neither the Governor's website nor the reports to the legislature provide any indication of whether the state has successfully recouped this start-up money from failed businesses. It's not possible for taxpayers to evaluate whether the aggregate \$22,600,000 was a prudent use of tax dollars.

The following three examples use public records request to shine a light on what the Office of the Governor's website does not show. It examines three cases where private entities were given significant funds through TETF and shortly thereafter failed to commercialize. In all three examples, no details are given as to whether the state was able to recoup TETF funds.

21-Century Silicon –

On January 30, 2009, 21-Century Silicon was awarded \$3.5 million through a TETF Subchapter D commercialization grant. According to the FY2013 Project Description, 21-Century Silicon was given the \$3.5 million with the intended outcome that they bring to market their own furnace design to manufacture solar-grade poly silicon at a lesser costs than traditional methods. According to the Office of the Governor's FY2013 Legislative Report, 21-Century Silicon was unable to commercialize, failing to meet a requirement for continued funding. Because of 21-Century Silicon's failure to bring a product to market, the Office of the Governor referred the matter to the Office of the Attorney General, who subsequently sent a letter demanding repayment of the disbursed award – citing failure to continue commercialization efforts.²⁸ Although the FY2013 Legislative Report cites the failure to commercialized and the resulting attempted clawback – it fails to indicate whether the \$3.5 million was successful

²⁸ http://governor.state.tx.us/files/ecodev/etf/TETF_Report_FY2013.pdf

collected, in part or in whole, or whether 21-Century Silicon responded to the demand by the Office of the Governor or the Office of the Attorney General.

Due to the lack of publically available information regarding the status of the 21-Century Silicon clawback, the Texas Public Interest Research Group (TexPIRG) Education Fund submitted a public records request on July 9, 2014 pursuant to the The Public Information Act, formerly known as the Open Records Act.²⁹

TexPIRG Education Fund’s attempts to force disclosure about these public funds were largely blocked by the Office of the Governor. The Office of the Governor issued a Public Information Decision Request (OOG ID# 188-14 Smith) on July 23, 2014, arguing that communications between the Office of the Governor and the 21-Century Silicon or the Office of the Governor and the Office of the Attorney General regarding repayment of funds received by the company under the Texas Emerging Technology Fund or the ceased operations of the company were excepted from disclosure under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code.

The Office of the Governor provided some information that was responsive to our request, listing the 21-Century Silicon as a Project Recipient, their address, the industry the grant fell in to, and the project description – information that was all already available through the FY2013 Legislative Report.

Project Recipient	Address	Industry	Cluster	Description	Total Award	Distributed	Equity Position	
							# of Shares	Comments
21-Century Silicon, Inc.	1661 Firman Drive Suite 103 Richardson, TX 75081	Energy	Energy	Intended outcome: Commercialization of a proprietary furnace design to manufacture solar-grade poly silicon at a lesser cost of conventional methods. Actual outcome: The company installed a furnace and demonstrated an ability to produce quantities of solar-grade silicon, but failed to commercialize. The Office of the Governor subsequently sent a letter demanding repayment of the disbursed award for failure to continue commercialization efforts. The Office of the Governor referred the matter to the Texas Office of the Attorney General. The company has ceased	\$3,500,000	\$3,500,000	5,823,610	Common Stock, Certificate in Safe

Neither the Office of the Governor, nor the Office of the Attorney General, have released any of the requested information to the TexPIRG Education Fund on the status of the 21-Century Silicon \$3.5 million clawback. Texans have no way of knowing whether taxpayer dollars were recouped in whole or part.

BetaBatt, Inc.

On June 20, 2008, the Office of the Governor awarded \$500,000 to BetaBatt, Inc. through the Texas Emerging Technology Fund Subchapter D Commercialization program. The intended outcome of the award was to commercialize the BetaBattery, a long-life, self-recharging battery. According to the Office of the Governor’s FY2013 Legislative Report, BetaBatt, Inc. obtained exclusive licensing rights through the University of Rochester – but failed to demonstrate continued commercialization efforts and failed

²⁹ Chapter 552 of the Government Code

to provide the required compliance reports. As a result, the Office of the Governor demanded repayment of the \$500,000 distributed award. The company has since ceased operations.³⁰

Because the Legislative Report does not indicate whether the Office of the Governor was successful in obtaining repayment of the \$500,000 grant, TexPIRG Education Fund submitted a public records request – seeking to obtain communications between the state of Texas and BetaBatt, Inc. regarding the return, in whole or part, of the TETF distributed grant.

Citing section 552.101 of the Government Code in conjunction with section 490.057, the Office of the Governor did not release any communication – but instead enclosed a document with BetaBatt, Inc’s address, the award distribution amount, the industry and cluster and the intended outcome description.

BetaBatt, Inc.	12819 West Leigh Drive Houston, TX 77077	Energy	Energy	Intended outcome: Commercialization of the BetaBattery™, a long-life, self-recharging battery. Actual outcome: The company obtained exclusive licensing rights to both betavoltaic and photovoltaic technology aspects from the University of Rochester. The company failed to demonstrate continued commercialization efforts and failed to provide the required compliance report. The Office of the Governor demanded repayment of the disbursed award. The company has ceased operations.	\$500,000	\$500,000		
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Neither the Office of the Governor, nor the Office of the Attorney General, have released any of the requested information to the TexPIRG Education Fund on the status of the BetaBatt, Inc. \$500,000 clawback.

ThromboVision, Inc.

On July 15, 2007, ThromboVision, Inc. was awarded \$1.5 million in order to commercialize the ThromboGuide platelet function monitor. ThromboVision applied for FDA approval in August 2008, but after five rounds of clinical testing, the FDA denied approval.³¹ ThromboVision also failed to submit the required annual reports from 2008-2010 and eventually went bankrupt in 2010.³² The state filed a Proof of Claim in the bankruptcy proceedings and the matter was referred to the Office of the Attorney General.³³ The company ceased operations in 2010.

Because the Legislative Report does not indicate whether the Office of the Governor or the Office of the Attorney successfully stated a claim in the bankruptcy proceedings in order to recoup the \$1.5 million TETF grant, TexPIRG Education Fund submitted a public records request – seeking to obtain communications between the state of Texas and ThromboVision, Inc. regarding the return, in whole or part, of the TETF distributed grant.

Again, citing section 552.101 of the Government Code in conjunction with section 490.057, the Office of the Governor did not release any communication – but instead enclosed a document with ThromboVision, Inc’s address, the award distribution amount, the industry and cluster and the intended outcome description.

³⁰ Ibid

³¹ Ibid

³² <http://online.wsj.com/news/articles/SB10001424052702304760604576428262897285614>

³³ http://governor.state.tx.us/files/ecodev/etf/TETF_Report_FY2013.pdf

Thrombo Vision, Inc.	5508 Shadow Crest St. Houston, TX 77096	Medical Device	Biotechnology & Life Science	<p>Intended outcome: Commercialization of ThromboGuide™ platelet function monitor.Actual outcome: The company completed design and prototype development of a 5th generation monitor in 2007. These devices were used to conduct several clinical trials, including at Houston Methodist Hospital. An application for FDA approval was filed in August 2008, however, after five rounds of questioning and additional clinical testing, the FDA denied approval. ThromboVision filed for bankruptcy in September 2010 and the state filed a Proof of Claim. The Office of the Governor referred this matter to the Texas Office of the Attorney General. The company has ceased operations.</p>	\$1,500,000	\$1,500,000	OUT OF BUSINESS
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According to the FY13 legislative report for the TETF – 17 private entities that received funding through subchapter D commercialization grants have ceased operation – and the neither the Governor’s website or the reports to the legislature provide any indication of whether the state has successfully recouped this money.

In addition to the failure to provide the necessary information online in an accessible format, the Office of the Governor has relied on exceptions to the The Public Information Act to prevent taxpayers, watchdog organizations or elected officials from accessing the information through the formal public records request process.

Obviously, with any investment – there is a risk of loss. This is particularly true with the TETF, which acts as a start-up incubator. However, when companies fail to deliver the agreed-upon public benefit – or in this case companies that fail to commercialize, the public should be able gauge the appropriateness and effectiveness of the investments, including the State’s ability to recoup any funds through clawbacks.

Additional Texas Subsidy Programs with Lack of Transparency

While the TEF and the TETF are two of the nation’s most prolific subsidy programs, Texas is also home to the Texas Economic Development Act (Ch. 313), the Skills Development Fund and the Texas Moving Image Industry Incentive Program. According to the national watchdog Good Jobs First’s 2014 analysis,³⁴ the Film Tax Credit and Skills Development Fund both received zero points out of a hundred in their transparency scorecard³⁵ because there is no publically available online information on recipients for these two funds. From FY2012-2014 the Skills Development Fund has cost taxpayers more than \$48 million and the recent annual costs for the Film Tax Credit are not available.³⁶

How Texas Can Improve Economic Development Transparency

Despite the continued improvement in state level transparency, and Texas’ leadership in online transparency through the online portal, more must be done to ensure that citizens, budget watch dogs, and policy makers have greater ability to monitor government spending, evaluate budget decisions and ensure that specific contracts to private companies are a smart choice for the state and for our public priorities.

³⁴ Good Jobs First. (2014). *Show Us the Subsidized Jobs*
<http://www.goodjobsfirst.org/sites/default/files/docs/pdf/showusthesubsidizedjobs.pdf>

³⁵ *ibid*

³⁶ *Ibid*

Our findings, based on publically available data from the Office of the Governor and the Office of the Comptroller, public records requests and independent research reveal several important changes which could greatly improve the state of transparency around some of the nation's most costly economic development programs.

- Texas should provide recipient-specific details on the benefits – both projected and actual – of all economic development grants. This includes the number of projected jobs in the original contract, any amended job projects and actual jobs created. Without this information, watchdog groups and concerned citizens cannot ensure that taxpayers are getting their money's worth from the specific subsidy programs.
- Texas should provide downloadable versions of all original contracts, contract amendments, verification reports and termination agreements with only truly proprietary information redacted.
- Texas should provide details and status of funds recouped, in part or whole, from companies that fail to deliver on the agreed-upon public benefits laid out in subsidy agreements.
- Information for all economic development subsidy programs should be housed on www.texas Transparency.org so that users can access a comprehensive, one-stop, one-click searchable dataset at the recipient level. Without all of the information available in one user-friendly and accessible location, concerned citizens and policy makers face unnecessary obstacles in their ability to evaluate the success of specific programs.
- Texas should allow users to downloading of information about economic development subsidies for offline analysis. Texans should be able to pull comprehensive data from the checkbook dataset in a user-friendly and accessible format for later offline use.
- Texas should also provide check-book level spending on *all* economic development programs, including adding detailed information for the Film Tax Credit program and the Skills Development Fund. Texans deserve to know how much is spent annually on every program, and who receives this money.

APPENDIX: A leader in Economic Development Spending Transparency: Indiana

In May 2013, The Indiana Economic Development Corporation (IEDC) launched a new website to shine a light on the state’s economic development subsidies. The new IEDC website is accessible from Indiana’s transparency website, supporting the standard that all state spending information should be centrally accessible. The site is user-friendly – allowing visitors to create targeted searches that filter through the list of recipient companies and download the results for offline analysis. The website even provides copies of subsidy contracts – a best practice followed by too few other states. Constituents can search through the State Contract Portal and Indiana Economic Development Corporation websites for contracts made between the state and individual companies, specify their searches by year, recipient, location, fund type, and contract status, and download the results for offline analysis.

Project Id	Recipient Name	City	County	Fund Type	Contract Yr	Contract Amt
32548	Heartland Automotive	Greencastle	Putnam	SEF	2006	\$114,500.00
331963	Romweber Company (The)	Batesville	Ripley	SEF	2005	\$74,700.00
333446	Sunright America, Inc.	Columbus	Bartholomew	SEF	2005	\$7,000.00
334128	Workhorse Custom Chassis (Union City Body Company)	Union City	Randolph	SEF	2005	\$250,000.00
334158	Millennium Industries Corporation	Ligonier	Wayne	SEF	2012	\$33,000.00
334186	Becton, Dickinson & Company	Plainfield	Hendricks	SEF	2006	\$42,500.00
334186	Becton, Dickinson & Company	Plainfield	Hendricks	IDGF	2005	\$400,000.00
334679	Dixie Chopper	Coatesville	Hendricks	SEF	2006	\$57,000.00
334684	Taconic Farms, Inc.	Cambridge City	Wayne	IDGF	2005	\$107,500.00
334868	Republic Airways Holdings Inc.	Indianapolis	Marion	SEF	2005	\$400,000.00
334868	Republic Airways Holdings Inc.	Indianapolis	Marion	IDGF	2006	\$500,000.00
334977	Rockland Wood Products, LLC d/b/a Rockland Flooring	Monon	White	SEF	2005	\$79,500.00
335021	University Loft Company	Greenfield	Hancock	SEF	2007	\$49,500.00
335225	Advantis Medical, Inc.	Greenwood	Johnson	SEF	2005	\$32,000.00
335237	Indiana Packers Corp.	Delphi	Carroll	IDGF	2005	\$250,000.00
335375	Lake Erie Products	Frankfort	Randolph	SEF	2005	\$76,500.00
335511	Dover Industrial Products, Inc.	Madison	Jefferson	EDGE-R	2005	\$500,000.00
335573	Helmer Labs, Incorporated	Noblesville	Hamilton	TECH	2005	\$10,000.00
335627	Steel Dynamics, Inc.	Pittsboro	Hendricks	IDGF	2005	\$500,000.00
335647	ATTC Manufacturing, Inc.	Tell City	Perry	SEF	2007	\$62,500.00

Indiana also tracks when economic development dollars are reclaimed because subsidy recipients failed to deliver on promised benefits. The IEDC inserts clawback clauses into subsidy contracts that allow the state to recoup these funds, like Texas, but the new website actually provides details on the funds recouped. This is an exemplary standard that the Office of the Governor should follow.



Indiana Economic Development Corporation Transparency Portal

[Home](#) > [Back To Search Results](#)

Company Details

Project ID : 335987
Recipient : BioStorage Technologies, Inc.
City : Indianapolis
County : Marion

Contract Documents

[BioStorage Technologies LLC \(335987\)
HBI.pdf](#)
[BioStorage Technologies LLC 335987
HBI Agreement.pdf](#)

Quick Links

[Definition of Terms](#)

[Definition of Funds](#)

Incentive Details

Fund Type : HBI
Contract Date : 12/5/2005
Contract Status : Contract Ended
Contract Amount : \$2,174,151.00
Paid/Certified to Date : \$750,324.00
Expected Qualified Investment : \$7,247,171.00
Actual Qualified Investment : \$2,501,079.00
Adjustment : (\$0.00)
In Collections : \$0.00
Uncollectible : \$0.00
Compliant Contract : Y

While Indiana's transparency efforts for economic development subsidies have excelled in many ways, there remains room for improvement – including many of the policy recommendations made for Texas – including posting the number of jobs actually created by company recipients.

Indiana's transparency practices allow citizens to bypass the costly, time-consuming open records request process and ultimately saves the government money in administrative costs and staff time. Moreover, this level of transparency helps boost public confidence in government accountability.

Texas should look to IEDC as inspiration for how to increase transparency and open government for taxpayers, watch dogs and policy makers and elected officials.