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PROMOTION OF TEXAS ENTERPRISE FUND FOCUSES ON 'CLAWBACK' PROVISIONS

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Incentive deals that had roles in luring big-name companies like Apple Inc. to Austin and Toyota Motor Corp. to Plano have generated the bulk of publicity in recent years for atop state economic development tool: the Texas Enterprise Fund.

But the outcomes of deals that ultimately flopped are being touted as equally strong selling points for the fund, at a time when proponents, including Gov. Greg Abbott, are advocating for more taxpayer money for it.

A new report to the state Legislature from Abbott's economic development office, which oversees the fund, points out that about $36 million has been returned to the state over the past two years because of so-called "clawback" provisions after companies failed to deliver on commitments, or because of amendments to and terminations of old deals. During roughly the same period, the fund awarded about $61 million in incentives for new economic development projects, which are projected to create a combined 16,600 jobs.

John Wittman, a spokesman for Abbott, said the report illustrates the rigor that Abbott has brought to oversight of the fund, which was criticized as having lax controls under former Gov. Rick Perry in a 2014 state audit and has been criticized in some quarters for doling out "corporate welfare," even as economic development officials statewide consider it essential.

Under Abbott, "the Texas Enterprise Fund has been revamped to include additional methods of transparency," Wittman said, as well as increased "protections for taxpayers" that include mandatory clawback clauses in all contracts.

Abbott is seeking about $90 million in new taxpayer money for the fund during this year's legislative session, according to his economic development office. The amount is estimated to be enough for the fund to start the state's upcoming two-year budget cycle that begins Sept. 1 with a balance of about $150 million.

The enterprise fund is widely considered the largest deal-closing incentive fund in the country, meaning it's designed to provide the final carrot that swings a decision on a corporate relocation or expansion. Created in 2003, incentives awarded from the fund have totaled $609.4 million, according to state figures, garnering commitments for over 94,000 direct new jobs in Texas.

Without it, "I don't think we would continue to lead the country in job growth and economic growth," said Justin Yancy, president of the Texas Business Leadership Council. "You have to have these tools in place; it's just part of the (national) competition for jobs now."

He and other proponents of the fund, who include many among the state's top business leaders, say Texas must be able to dangle financial incentives when attempting to lure new projects, if for no other reason than to help offset a heavier-than-average reliance on property taxes here that can generate big bills for corporate campuses and factories.

Yancy described himself as a longtime fan of the enterprise fund but said the changes under Abbott, as well as the new report, should alleviate some of the concerns of detractors.

"It's a perfect way to say we're in the game — and we're competing with other states and regions, but we're doing it in a manner that is fiscally sound and transparent," he said.

Critics aren't ceding those last two points, however.

Nathan Jensen, a University of Texas government professor who is conducting his own study of the enterprise fund, said his initial research indicates that even more money from deals gone bad likely would have been returned to it if companies hadn't been allowed to quietly amend contracts to lessen requirements.

In addition, taxpayer-funded financial incentives are seldom determining factors in corporate location decisions, Jensen said, citing previous academic findings that show, nationwide, they generally just pay companies for actions they were going to take anyway.

The new Texas report "gives basic information" on the enterprise fund, Jensen said. "But it's not an audit and it's not an evaluation" that rates effectiveness.

He said more than a quarter of companies awarded incentives from the Texas Enterprise Fund have contested his requests to the state for access to applications, contracts and potential amendments, arguing that the information would reveal competitive information.

Based on documents received so far, however, "firms that were most likely to challenge our requests were firms that amended their contracts in methods that are consistent with lowering standards to avoid formal noncompliance with the program, " Jensen's working paper says.

According to the new state report, about a third of the incentive money awarded since the fund's inception — or $206 million — has gone to projects in the Central Texas region, which includes Austin and San Antonio, resulting in about 46,000 new jobs.

Several Austin-area incentive contracts were terminated early during the past two years by the companies that received them, the report said, although some of those companies — Facebook, Oracle and Samsung Austin Semiconductor — had simply achieved their goals for jobs and investment sooner than required.

But others ended their contracts after failing to live up to commitments.

Dropbox Inc. was required to return about $430,000 of $500,000 it was awarded in 2014 because it created only 67 of the 170 jobs to which it had committed. In addition, eBay received only half of the $2.8 million it was awarded in 2011, and then returned about $200,000 of the sum after the company created only 138 of the 1,050 jobs it promised in Austin.