Watch Your Assets

September 8, 2010

Phantom Jobs

The Texas Enterprise Fund's Broken Promises

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"It's true that due to the economy, many of us have not created the number of jobs that the state was hoping for."

--Iga Hallberg, vice president of Enterprise Fund-recipient HeliVolt Corp.

I. Introduction

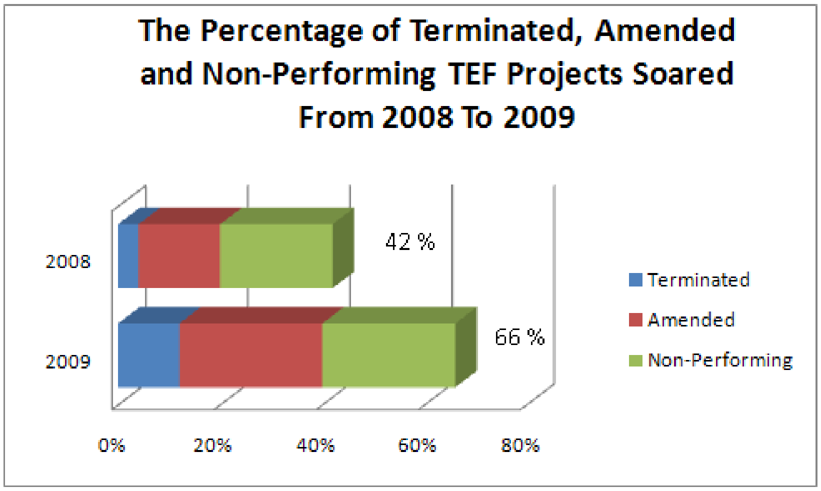
Private companies took tens of millions of state dollars without delivering on related job promises as the global recession struck in 2008, a previous Texans for Public Justice study revealed.[1] As Rick Perry makes the Texas Enterprise Fund (TEF) a centerpiece of his reelection campaign, his office has politically manipulated the troubled jobs program. While Governor Perry convenes media events to unveil new TEF grants and job projects, his office works out of the limelight negotiating TEF amendments that rollback TEF job promises. TPJ predicted in its previous report that many more TEF recipients would default on job promises in 2009. Unfortunately for would-be Texas workers, that prognosis was dead on.

This report analyzes 2009 compliance reports filed by 50 TEF recipients that faced job targets by that year (this excludes recent grantees whose first job commitments arise thereafter). With notable exceptions, these 2009 compliance reports paint a dismal economic picture, raising questions about the return that taxpayers are receiving on the $368 million in state TEF funds. The Governor's Office has pulled the plug on six of the 50 TEF projects studied here, terminating them outright. Thirteen more TEF grant recipients broke their original TEF job promises in 2009, when Texas needed jobs more than ever. Fourteen more TEF recipients persuaded the Governor's Office to amend their original TEF contracts to reduce their job pledges or postpone hiring dates. TPJ classified four TEF projects as "troubled" (typically they could not meet their 2009 job commitments without drawing on surplus job credits accumulated in previous years).[2] TPJ classified two TEF contracts as "weak" as originally negotiated because these deals either failed to impose a job-creation deadline or allowed a recipient to take credit for jobs unrelated to their TEF grant. Finally, 11 TEF recipients kept their 2009 job commitments without signs of problems.

TEF Job Performances Plummeted From 2008 To 2009

TEF Compliance Status	Projects In 2008	2008 Percentage	Projects In 2009	2009 Percentage
Amended	7	16%	14	28%
Non-Performing	10	22%	13	26%
Performing	13	29%	11	22%
Terminated	2	4%	6	12%
Troubled	9	20%	4	8%
Weak	3	7%	2	4%
Informally Amended	1	2%	0	0%
TOTALS:	**45**	**100%**	**50**	**100%**

In the space of one brutal year, the percentage of TEF job projects that were terminated, non-performing or crippled by amendments shot up from 42 percent to 66 percent. TEF failed to deliver on its promises in 2009—when Texas needed the jobs most. The governor and his staff share some of the blame. They repeatedly amended TEF contracts to lower the criteria used to measure success, saddling corporate welfare recipients with the poison of low expectations (although the governor, lieutenant governor and House speaker approve initial TEF grants, the Governor's Office alone negotiates TEF amendments).



In its first four years of operation, TEF amended just one development deal.[3] Today, the Governor's Office has amended 14 TEF contracts at least once (see accompanying table).[4] These amendments had a crippling impact on the number of new jobs that the affected companies were required to produce during the recession. The original TEF contracts of these 14 grant recipients required them to create a total of 9,793 new jobs by the end of 2009. As amended, the same recipients had to create just 6,017 jobs in that same period. These alterations vaporized 3,776 promised jobs in 2009, or 39 percent of what the parties originally promised. Over their entire lives, the 14 altered agreements originally promised a total of 17,614 new jobs. Amendments dropped these promises to 12,729 new hires, eliminating 28 percent of the promised jobs.

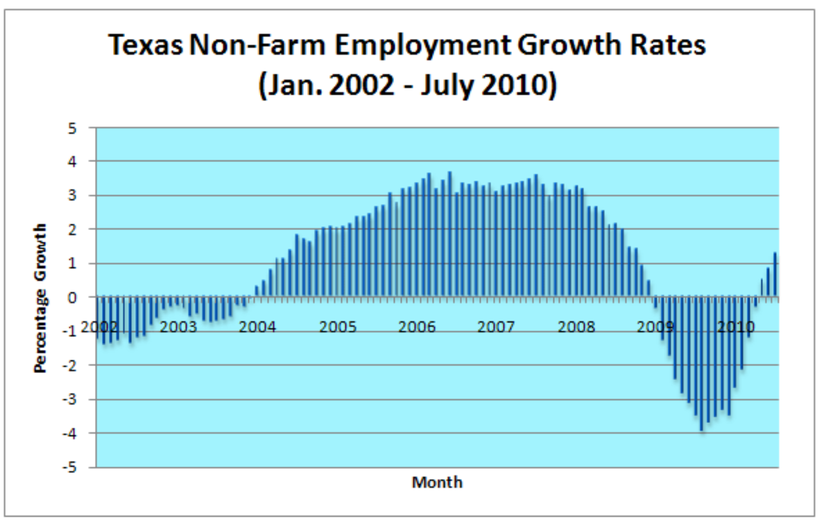
The Governor's Office has not come clean about the extent to which its job promises have receded during the recession. More often than not, it continues to tout the larger job numbers found in the original TEF contracts rather than the smaller, amended job targets that it has since negotiated. The last two columns in the accompanying table show five cases where amendments slashed a TEF contract's total job targets. Although the last of these amendments were signed in late 2009, a June 2010 TEF report on the governor's website continued to report the larger, outdated job numbers for four of the five projects. While political capital might be squeezed from phantom jobs, the charade breaks down for Texas families that can't cash a phantom paycheck.

Governor Perry likes to boast about Texas' economic performance, which he attributes to TEF and to state policies limiting regulations, torts and taxes. As the accompanying graph illustrates, however, Texas' employment growth rate turned negative starting in February of 2009, according to Texas Workforce Commission data, and did not swing to positive growth until May 2010. Texas' unemployment rate shot well beyond its peak during the dot.com-bomb,[5] hitting 8.2 percent in July 2010 (below the U.S. unemployment rate of 9.5 percent). Whether measured by unemployment, job losses or Texas' gross domestic product, it is Texas' worst performance in 22 years, surpassing slumps in 1982, 1985 and 2001, according to a 2010 report by the Federal Reserve Bank of Dallas.[6] Although it outperformed the national economy, Texas' pain was tangible—with 350,000 jobs destroyed in 12 months. Many TEF-subsidized enterprises reported that they, too, have been hammered.

Amendments Gutted Job Targets For 2009, When Texas Needed the Jobs Most

TEF Recipient	Original '09 Job Target	Amended '09 Job Target	Original *Total* Job Target	Amended *Total* Job Target
Albany Engr Composites	103	0	**337**	137
Allied Production Solutions	153	0	200	200
Authentix	57	25	120	120
Fidelity Global Brokerage	1,535	175	1,535	**850**
HelioVolt Corp.	153	40	158	158
Lee Container	90	50	105	105
Lockheed Martin	800	550	**800**	550
Martifer Energia, S.A.	122	122	225	225
Motiva	140	140	300	300
Rackspace	1,225	475	**4,000**	1,225
Rockwell Collins	334	334	334	334
Texas Energy Center	1,500	525	**1,500**	525
TX Instit. for Genomic Med.	581	581	5,000	5,000
Vought*	3,000	3,000	3,000	3,000
TOTALS:	**9,793**	**6,017**	**17,614**	**12,729**

Note: Where original and amended job targets differ, the job number listed in **bold** is what the Governor's Office claimed in a June 2010 report posted on its website.[7]
*Amendment contains a multiplier to generate phantom jobs (see Vought profile below).



Source: Texas Workforce Commission and Texas A&M University Real Estate Center.

A June 2010 TEF report credits TEF for creating 53,625 jobs. Governor Perry similarly claimed in January 2010 that TEF has created 54,600 jobs since the program's inception in 2003.[8] Recent TEF compliance reports provide evidence of 22,544 jobs in which a TEF grantee employed new workers on a TEF-funded project by the end of 2009. This covers 41 percent of Governor Perry's jobs claim. Three TEF projects made much sketchier claims for spurring 8,147 *indirect* jobs in 2009 (see profiles for the Center for Advanced Biomedical Imaging, Texas Energy Center and Texas Institute for Genomic Medicine). Combining these more nebulous claims yields 30,691 jobs,[9] or 56 percent of the governor's claim. Clearly, Governor Perry counts jobs before they hatch, confusing job *promises* with actual paychecks. This is problematic on two levels. First, as explored below, this recession is littered with the broken promises of dozens of TEF recipients. Second, the governor's penchant for contract amendments has turned many TEF job promises into downward-moving targets. Taken together, Governor Perry is taking credit for creating tens of thousands of phantom jobs that are not now putting food on anybody's table. TEF's track record suggests that many phantom TEF jobs will never yield a paycheck.

While TEF touts job *creation*, it awarded $40 million to Sematech to *maintain* pre-existing jobs.[10] Pre-existing jobs also are a concern with at least five TEF projects that belatedly established—or lowered—the baseline used to count "new" jobs (see profiles of Fidelity, HelioVolt, Motiva, Rockwell Collins and Vought). Nor are all TEF-subsidized jobs reserved for Texans. TEF's $7 million contract with Tyson Foods expresses the "goal (but not requirement)" that 90 percent of the hourly workers at Tyson's Sherman plant be "Texas residents." Portugal-based Martifer Energy Systems reported in May that 11 of the 21 workers that it lined up for its TEF-subsidized plant in San Angelo were awaiting U.S. work visas.

The Governor's Office does a better job of doling out state money than recovering it. TEF contracts contain liquidation clauses that grant the state the option of recovering all of its funds—plus interest—if a grant recipient falls woefully short of initial job targets. In a typical TEF contract the job "floor" that triggers this death penalty is defined as half of a recipient's initial job promise. Albany Engineered Composites, for example, signed a January 2008 TEF contract that promised to produce a grand total of 337 new Texas jobs, including 55 jobs by the end of 2008. The liquidation clause allowed the state to demand a refund if Albany failed to produce 28 jobs by the end of the first year. Albany reported that it produced just 17 jobs, at the end of 2008. A year later, it reported that its Bourne plant now employed 13 fewer people than it did when it signed its TEF contract two years earlier. Instead of imposing the death penalty, the Governor's Office amended the contract in late 2009 to retroactively relieve Albany of its obligation to produce *any* new jobs in 2008 *or* 2009.

As Albany's profile reveals (see below), the recession has mercilessly hammered this manufacturer of aerospace materials. Yet the crisis also has been merciless to the other party to TEF contracts: taxpaying Texans. Job creation has been the primary justification for TEF awarding more than $300 million in scarce *public* funds to *private* enterprises. Suffering its worst economic crisis in decades, Texas desperately needs jobs *today*. More often than not, when TEF recipients qualify for the death penalty by failing to deliver promised jobs, the Governor's Office shifts the goal posts with amendments rather than recouping the state's money. TEF awarded more than $6 million to six companies that qualified for the death penalty in 2008 or 2009 (see accompanying table). So far the Governor's Office has acknowledged terminating just one of these deals: Gulfstream Aerospace.

TEF agreements also contain "clawback" provisions that allow the state to impose financial penalties when recipients fail to meet contractual commitments. The Governor's Office reported in June 2010 that it had imposed $2.8 million in such penalties on 17 of the 50 TEF recipients studied here (34 percent of the projects). These penalties amounted to less than 2 percent of the $116 million that TEF already had disbursed to these companies. Many of TEF projects also received other public subsidies in the form of property-tax abatements, job-training grants or tax credits.

Recent TEF Contracts That Qualified For the Death Penalty

Recipient	Job-Target 'Floor' That It Flunked	Original TEF Grant	Original Jobs Promise	Penalties Levied By June 30, 2010
Albany Eng. Composites	28 jobs	$1,000,000	337	$29,716
Authentix	15 jobs	$1,000,000	120	$32,116
FlightSafety Intern'l	12 jobs	$720,000	125	$0
Gulfstream	37 jobs	$750,000	150	**Terminated**
Martifer-Hirschfield	5 jobs	$945,000	225	$12,180
Santana Textiles	6 jobs	$1,650,000	800	$64,496

Evaluating original TEF contracts, TPJ identified 50 TEF projects that faced some kind of job target by the end of 2009.[11] Eleven recent TEF awards could not be evaluated because their initial job targets come due in 2010 or thereafter.[12] TEF awarded the 50 projects analyzed here a total of $368 million to create or maintain 33,166 by the end of 2009. By that time they reported that they delivered 30,381 jobs;[13] this total drops to 23,678 if you throw out two projects that claim thousands of jobs nebulously linked to their TEF grant (Center for Advanced Biomedical Imaging and Texas Institute for Genomic Medicine). Over their entire lifetimes, these same 50 projects pledged to eventually create 49,581 jobs (at an average of $7,426 per job). As of the end of 2009, these TEF projects certified the existence of 61 percent of these jobs. Some of the remaining 19,200 promised jobs will be created in the future. Others will be wiped out by contract amendments and terminations, never producing a paycheck.

This report takes a closer look at TEF projects that the Governor's Office has amended or terminated, as well as projects that are troubled, weak or non-performing. Comparing the original contractual promises of TEF grant recipients to the actual results that they have reported reveals that unemployed Texans share something in common with the Texas Enterprise Fund. They are both haunted by the specter of many thousands of phantom jobs.

TEF Penalties Amount To Just 2 Percent of State Funds Paid to Penalized Companies

Recipient	TEF Penalties Imposed (By 6/10)	TEF Funds Disbursed (By 6/10)	Penalty As Percent of TEF Disbursement	Total TEF Grant
Albany Engin'd Composites	$29,716	$300,000	10%	$1,000,000
Authentix	$32,116	$750,000	4%	$1,000,000
Cabela's	$177,288	$400,000	44%	$600,000
Fidelity Global Brokerage	$484,068	$8,500,000	6%	$8,500,000
HelioVolt Corp.	$45,560	$500,000	9%	$1,000,000
Hilmar Cheese	$612,579	$7,500,000	8%	$7,500,000
Huntsman	$106,811	$2,750,000	4%	$2,750,000
Lee Container	$19,080	$300,000	6%	$300,000
Martifer-Hirschfield Energy	$12,180	$500,000	2%	$945,000
Sanderson Farms	$81,891	$500,000	16%	$500,000
Santana Textiles do Brasil	$64,496	$800,000	8%	$1,650,000
Superior Essex Communication	$749	$250,000	<1%	$250,000
TX Instit. for Genomic Medicine	$16,905	$50,000,000	<1%	$50,000,000
Trace Engines	$77,099	$250,000	31%	$456,000
Tyson Foods	$26,899	$7,000,000	<1%	$7,000,000
U.S. Bowling Congress	$26,936	$305,000	9%	$610,000
Vought Aircraft	$944,000	$35,000,000	3%	$35,000,000
TOTALS:	**$2,758,373**	**$115,605,000**	**2%**	**$119,061,000**

Note: Penalties include repayment penalties, clawbacks and performance-based losses of additional disbursements.

Unemployment Insurance Has Funded the Enterprise Fund

The severe recession quickly drained Texas' Unemployment Compensation Trust Fund of sufficient funds to pay benefits to all the state's laid-off workers. To prevent shortfalls, the Texas Workforce Commission has tripled the unemployment-insurance taxes paid by most employers in 2010.[1] TEF exacerbated this problem. The state unemployment fund has transferred $161.5 million to Governor Perry's job fund since the legislature authorized such funding in 2005.[2] In other funding, the legislature has appropriated $577 million for TEF since 2003 (though it snubbed Governor Perry's request for $261 million more in 2009).[3]

[1] Jobless Taxes To Spike for Many Employers," *Dallas Morning News*, December 9, 2009.
[2.] "Enterprise Fund Pulls Millions From Unemployment Taxes," Associated Press, April 1, 2009.
[3] "Perry, Dewhurst See Pet Projects Trimmed," *Dallas Morning News*, May 20, 2009. The Legislature authorized TEF by passing HB 7 and SB 1771 in 2003.

Status of Job-Related TEF Contracts

Recipient	Location	TEF Grant	Total Job Target	2008 Status	2009 Status
ADP	El Paso	$3,000,000	1,028	Performing	Performing
Albany Engin'd Composites	Boerne	$1,000,000	337	Non-Performing	Amended
Allied Production Solutions	Gainesville	$800,000	200	Amended	Amended
Alloy Polymers	Crockett	$200,000	52	Troubled	Terminated
Assoc. Hygienic Products	Waco	$520,000	115	Fledgling	Performing
Authentix	Addison	$1,000,000	120	Non-Performing	Amended
Cabela's	Buda/Fort Worth	$600,000	400	Non-Performing	Non-Performing
Ctr for Adv Biomed Imaging	Houston	$25,000,000	2,252	Weak	Weak
CITGO Petroleum	Houston/Corpus	$5,000,000	820	Performing	Performing
Comerica	Dallas	$3,500,000	200	Troubled	Performing
Countrywide Financial	Richardson	$20,000,000	7,500	Troubled	Terminated
Fidelity Global Brokerage	Westlake	$8,500,000	1,535	Non-Performing	Amended
FlightSafety International	Irving	$720,000	125	Fledgling	Non-Performing
Gulfstream	Dallas	$750,000	150	Non-Performing	Terminated
HelioVolt Corp.	Austin	$1,000,000	158	Performing*	Amended
Hewlett-Packard	Austin/Houston	$5,000,000	420	Terminated	Terminated
Hilmar Cheese	Dalhart	$7,500,000	376	Non-Performing	Non-Performing
Home Depot	Austin/N. Braunfels	$8,500,000	843	Troubled	Performing
Huntsman	Woodlands	$2,750,000	326	Troubled	Non-Performing
Ineos USA LLC	League City	$750,000	100	Performing	Performing
JTEKT Automotive	Ennis	$333,000	200	Performing	Troubled
KLN Steel Products	San Antonio	$900,000	300	Fledgling	Non-Performing
Lee Container	Nacogdoches	$300,000	105	Non-Performing	Amended
Lockheed Martin	Houston	$5,480,000	800	Amended	Amended
Martifer Energia	San Angelo	$945,000	225	Amended	Amended
Maxim	San Antonio	$1,500,000	500	Performing	Troubled
Maxim	Irving	$5,000,000	1,000	Terminated	Terminated
Motiva	Port Arthur	$2,000,000	300	Performing	Amended
Newly Weds Foods	Mt. Pleasant	$450,000	115	Performing	Performing
Rackspace	San Antonio	$22,000,000	4,000	Amended	Amended
Raytheon	McKinney	$1,000,000	200	Performing	Performing
Rockwell Collins	Richardson	$1,678,392	334	Amended	Amended
Ruiz Foods	Denison	$1,500,000	423	Performing	Performing
Samsung	Austin	$10,800,000	900	Troubled	Non-Performing
Sanderson Farms	Waco	$500,000	1,312	Non-Performing	Non-Performing
Santana Textiles do Brasil	Edinburg	$1,650,000	800	Non-Performing	Non-Performing
Scott & White Memorial	Temple	$7,500,000	1,485	Performing	Performing
Sematech	Austin	$40,000,000	400	Weak	Non-Performing
Sino Swearingen Aircraft	San Antonio	$2,500,000	1,131	NA	Terminated
Superior Essex Commun.	Brownwood	$250,000	50	Troubled	Non-Performing
TX Energy Center	Sugar Land	$3,600,000	1,500	Amended	Amended
TX Instit for Genomic Med	Houston/A&M	$50,000,000	5,000	Amended	Amended
TX Instruments/UT Dallas	Richardson	$50,000,000	1,000	Weak	Weak
T-Mobile	Frisco	$2,150,000	855	Performing	Performing
Torchmark	McKinney	$2,000,000	500	Performing	Troubled
Trace Engines	Midland	$456,000	114	Non-Performing	Non-Performing
Tyson Foods	Sherman	$7,000,000	1,600	Troubled	Non-Performing
US Bowling Congress	Arlington	$610,000	175	Fledgling	Non-Performing
Vought Aircraft	Dallas	$35,000,000	3,000	Troubled	Amended
Washington Mutual	San Antonio	$15,000,000	4,200	Informal Amend.	Troubled
	TOTALS:	**$368,192,392**	**49,581**		

*TPJ wrongly classified HelioVolt as "performing" in 2008 (explained in HelioVolt profile below).

Note: Table excludes recent TEF deals facing initial job targets after 2009. Job numbers and grant amounts reflect original TEF contracts—not subsequent amendments.

II. The Enterprise Fund By the Numbers

TEF Recipients Running the Highest Promised-Job Deficits in 2009

Recipient	'09 Job Deficit	Original Job Target For '09	'09 Job Count	Total Original Job Pledge	TEF Grant	Deal Updates
Countrywide	-2,624	6,500	3,876	7,500	$20,000,000	Terminated
Vought	-2,136	3,000	864	3,000	$35,000,000	Amended
Fidelity	-1,316	1,535	219	1,535	$8,500,000	Amended
Sino Swearingen	-631	631	0	1,131	$2,500,000	Terminated
Rackspace	-608	1,225	617	4,000	$22,000,000	Amended
Hewlett-Packard	-310	310	0	420	$5,000,000	Terminated
Maxim (Irving)	-275	275	0	1,000	$5,000,000	Terminated
Rockwell Collins	-235	334	99	334	$1,678,392	Amended
Sanderson Farms	-200	1,312	1,112	1,312	$500,000	None
Gulfstream	-150	150	0	150	$750,000	Terminated
Lockheed Martin	-123	800	677	800	$5,480,000	Amended
HelioVolt	-113	153	40	158	$1,000,000	Amended
Martifer Energia	-111	122	11	225	$945,000	Amended
Albany Engineering	-103	103	0	337	$1,000,000	Amended
Santana Textiles	-103	103	0	800	$1,650,000	None
Tyson Foods	-102	1,600	1,498	1,600	$7,000,000	None
TOTALS	**-9,140**	**18,153**	**9,013**	**24,302**	**118,003,392**	

Biggest TEF Job Claims

Recipient	Original Jobs Pledge	TEF Grant	Project Status
Countrywide Financial	7,500	$20,000,000	Terminated
TX Instit. for Genomic Med.	*5,000	$50,000,000	Amended
Washington Mutual	4,200	$15,000,000	Troubled
Rackspace	4,000	$22,000,000	Amended
Vought	*3,000	$35,000,000	Amended
Ctr. For Adv. Biomed Imaging	*2,252	$25,000,000	Weak
Caterpillar, Inc.	1,714	$8,500,000	Fledgling
Tyson Foods	1,600	$7,000,000	Non-performing
Fidelity Global Brokerage	1,535	$8,500,000	Amended
TX Energy Center	*1,500	$3,600,000	Amended
TOTALS	**32,301**	**$194,600,00**	

*Includes indirect jobs not directly created by TEF funding or uses a multiplier to generate phantom jobs (see recipient profiles).

TEF Projects With Reported Surplus Job Credits in 2010

Recipient	Job Surplus Year-End 2009	Job Surplus Year-End 2008	Total Original Job Target
ADP	867	765	1,028
Assoc. Hygienic Products	65	0	115
Ctr. For Adv. Biomed Imaging	5,928	4,086	2,252
CITGO Petroleum	13	176	820
Comerica	20	17	200
Fidelity	44	0	1,535
JTEKT Automotive	102	114	200
Maxim (San Antonio)	151	207	500
Raytheon	151	143	200
Rockwell Collins	26	32	334
Ruiz Foods	808	520	423
Samsung (contract workers)	1,674	0	300
Samsung (direct hires)	163	0	600
Scott & White Memorial	1,454	241	1,485
T-Mobile	1,163	914	855
TX Energy Center	4,102	3,182	1,500
TX Instit. for Genomic Med.	11,893	3,301	5,000
Torchmark	349	346	500

Note: TEF recipients exceeding annual job targets can receive job credits to apply to future shortfalls. The Governor's Office reported that these TEF recipients began 2010 with surpluses. The existence of Fidelity's surplus and the size of Texas Energy Center's surplus were facilitated by amendments that slashed their job targets.

Worst- and Best-Paying TEF Jobs

Average Annual Job Compensation	Recipient	Original Job Target	TEF Grant
Worst-Paying Jobs			
$16,752	Lee Container	105	$300,000
$18,720	Sanderson Farms	1,312	$500,000
$23,000	Ruiz Foods	423	$1,500,000
$23,000	Cabela's	400	$600,000
$24,000	Tyson Foods	1,600	$7,000,000
$26,465	Hilmar Cheese	376	$7,500,000
$26,595	Santana Textiles do Brasil	800	$1,650,000
$28,000	Superior Essex Communication	50	$250,000
$29,500	Newly Weds Foods	115	$450,000
Best-Paying Jobs			
$152,500	Comerica	200	$3,500,000
$112,000	Ineos USA LLC	100	$750,000
$100,000	Authentix	120	$1,000,000
$97,343	Hanger Orthopedic Group	236	$1,500,000
$77,000	Huntsman	326	$2,750,000
$76,000	Lockheed Martin	800	$5,480,000
$72,000	CITGO Petroleum	820	$5,000,000
$72,000	HelioVolt Corp.	158	$1,000,000
$70,000	Ctr for Adv. Biomed. Imaging	*2,252	$25,000,000
$70,000	McLane Advanced Technologies	225	$1,000,000
$70,000	Sematech	400	$40,000,000
$70,000	Texas Energy Center	*1,500	$3,600,000

*Includes indirect jobs not directly created by TEF funding or uses a multiplier to generate phantom jobs (see profiles).

Priciest and Cheapest TEF Jobs

TEF Amount Per Job	Recipient	TEF Grant	Original Job Target	Average Annual Job Compensation
TEF's Priciest Jobs				
$100,000	Sematech	$40,000,000	400	$70,000
$50,000	TX Instruments/UT-Dallas	$50,000,000	1,000	$0
$19,947	Hilmar Cheese	$7,500,000	376	$26,465
$17,500	Comerica	$3,500,000	200	$152,500
$12,000	Samsung	$10,800,000	900	$63,000
$11,905	Hewlett-Packard	$5,000,000	420	$60,000
$11,667	Vought	$35,000,000	*3,000	$53,000
$11,101	Ctr. for Adv. Biomed. Imaging	$25,000,000	*2,252	$70,000
$10,083	Home Depot	$8,500,000	843	$36,584
$10,000	TX Instit. for Genomic Med.	$50,000,000	*5,000	$60,000
TEF's Cheapest Jobs				
$381	Sanderson Farms	$500,000	1,312	$18,720
$1,500	Cabela's	$600,000	400	$23,000
$1,665	JTEKT Automotive	$333,000	200	$30,000
$2,063	Santana Textiles	$1,650,000	800	$26,595
$2,151	LegalZoom.com	$1,000,000	465	$49,868
$2,210	Sino Swearingen Aircraft	$2,500,000	1,131	$50,000
$2,400	Texas Energy Center	$3,600,000	*1,500	$70,000
$2,515	T-Mobile	$2,150,000	855	$44,013
$2,632	Grifols, Inc.	$500,000	190	$38,471
$2,667	Countrywide Financial	$20,000,000	7,500	$40,846
$2,857	Lee Container	$300,000	105	$16,752
$2,918	ADP	$3,000,000	1,028	$30,908
$2,967	Albany Engr Composites	$1,000,000	337	$30,000

*Includes indirect jobs not directly created by TEF funding or uses a multiplier to generate phantom jobs (see recipient profiles).

III. Terminated Deals

Failed TEF deals formally terminated by the Governor's Office and the grant recipient.

Alloy Polymers

Virginia-based Alloy Polymers had no Texas employees before it acquired a chemical facility in Crockett from Amapcet Corp. in May 2006. Five months later TEF agreed to award Alloy $200,000 in tax dollars to invest $16 million in expanding that facility. Alloy pledged to create a total of 52 new jobs *at that plant* by the end of 2009, including 20 by 2007 and 35 by the close of 2008. What Alloy and TEF characterize as "new" jobs, however, sound a lot like "old" jobs. Alloy claims that it "created" 32 apparently preexisting jobs through its 2006 acquisition of the Amapcet plant. It reported that it created a total of eight additional Crockett-area jobs in 2006 and 2007, resulting in an on-paper claim of 40 jobs by the end of 2007.[14] A year later, Alloy reported that its Crockett employment had dropped to 35 people—for a total increase of just three jobs beyond what existed at Amapcet when Alloy bought the plant. In response to TPJ inquiries, the Governor's Office said on July 9, 2010 that Alloy had failed to submit its 2009 compliance report due in January 2010. The Associated Press later reported that the parties terminated Alloy's TEF contract that same day, with TEF recovering all disbursed state funds.[15]

Countrywide Home Loans

TEF awarded California-based Countrywide $20 million in 2004 to expand its mortgage-lending operations in Texas and to create 7,500 new jobs here by 2010. The agreement hails Countrywide as "one of the nation's fastest growing companies" that expanded its workforce 23 percent since the beginning of that year! During its frothy early TEF years, Countrywide racked up 4,699 surplus job credits that it could apply to any future shortfalls. When the housing market imploded in late 2007 Countrywide announced that it would layoff up to 20 percent of its 60,000 employees nationwide.[16] Bank of America acquired this ailing lender (and its TEF obligations) in mid-2008, several months before Bank of America landed a $15 billion federal bailout from the Troubled Asset Relief Program (TARP). Decrying that bailout, Governor Perry said, "We're certainly not interested in Washington bailing out a bunch of irresponsible mortgage brokers in an industry that has too often been run on greed."[17] At a press conference awarding $20 million in tax dollars to Countrywide four years earlier, however, Perry trumpeted that irresponsible mortgage lender as TEF's "crowning jewel."[18] Countrywide told TEF that its tally of new Texas jobs dropped in 2008 to 3,876 positions, or 1,624 jobs short of its target. While Countrywide covered that shortfall with surplus TEF job credits from its go-go days, that surplus would not cover its promise to create 7,500 new jobs by 2010. In this way, TEF's biggest job claim of all time imploded. The termination deal that the parties signed in late 2009 just requires Countrywide to repay 40 percent of the $20 million in taxpayer money that it received.[19] Separately, Countrywide agreed to pay $600 million in 2010 to settle shareholder lawsuits claiming that the company concealed risks as it loosened lending standards during the housing boom.[20] Meanwhile, Bank of America agreed to pay $108 million in 2010 to settle federal allegations that Countrywide used inflated and fictitious fees to gouge more than 200,000 foreclosure customers "already at the end of their rope."[21] The big, bad federal government accused TEF's "crowning jewel" of habitually kicking Americans in the family jewels.

Gulfstream Aerospace

TEF awarded $750,000 in early 2008 to Gulfstream to invest $20 million to expand a business-jet plant in Dallas. The deal pledged 150 new jobs by the end of 2009, with half due at the end of 2008. Gulfstream reported that it had created just 34 of the promised 75 jobs by the end of 2008. "The current unprecedented financial crisis, which is beyond any of our control, has caused severe economic deterioration," Gulfstream reported. The parties terminated the deal at the end of 2009, with Gulfstream agreeing to return the $375,000 in taxpayer funds that it already had received.

Hewlett-Packard Co.
When Hewlett-Packard (HP) sacked CEO Carly Fiorina in 2005 and replaced her with Mark Hurd, the new boss's mantra was "cost cutting." Analysts predicted that Hurd would slash up to 25,000 HP jobs.[22] Yet TEF signed a $5 million deal the following year for HP to spend $2 billion on four new data centers that would employ 420 Texans by 2010. The City of Austin threw in another $3.2 million in incentives for one complex.[23] The deal went sour before HP filed its first compliance report. The parties terminated the contract in early 2008 because HP "was unable to meet the Job Target."[24] The Governor's Office said it recovered the $3 million that it had released to HP plus $210,847 in penalties.

Maxim Integrated Products
Four years after awarding $1.5 million to California-based Maxim Integrated Products for a San Antonio chip plant, TEF granted Maxim another $5 million in 2007 for a $200 million chip facility in Irving. Maxim pledged that the Irving plant would employ 1,000 people by 2013. In its first compliance report, Maxim reported that "due to the economy…our plans for the Irving fab have been delayed." Maxim certified that it had just nine full-time workers at the end of 2007, far short of the promised 75 jobs. The parties terminated the contract in June 2008. The Governor's Office said it recovered the $2 million it had dispersed to Maxim as well as $107,149 in penalties. Maxim's other TEF-subsidized plant, located in San Antonio, reported that it fell 56 jobs short of its 500-job target in 2009 (see below).

Sino Swearingen Aircraft
Sino Swearingen Aircraft was a San Antonio-based maker of corporate jets in June 2006 when TEF awarded it $2.5 million to build a $36 million facility. Instead of creating the 1,131 new jobs it promised, Sino laid-off 100 workers and terminated its TEF agreement shortly after signing it.[25] Sino investor Doug Jaffe facilitated a lucrative land deal that enriched Governor Perry. The developer of an exclusive Horseshoe Bay resort, Jaffe sold two lots to local state Senator Troy Fraser in 2000. Fraser flipped one of them to Governor Perry for $310,762 in 2001.[26] An appraiser hired by the *Dallas Morning News* estimated that the actual value of the lot at the time was $450,000.[27] Perry then sold that parcel for $1.15 million in 2007 to a business partner of Jaffe's: Alan Moffatt. The *Morning News*-hired appraiser estimated that Moffatt paid $215,000 above the parcel's then-market price. If these independent appraisals are accurate, the parties to these transactions handed Perry $354,238 more than what an ordinary person would have made off the deal. Developer and Sino investor Jaffe told the *News* that he played no role in helping Sino obtain a TEF grant from the Governor's Office a year earlier. Perry's Democratic challenger, Bill White, suggested in 2010 that Sino's short-lived TEF deal helped the foundering company attract external investment.[28] Sino did secure new investment promises from ACQ Capital in 2007, shortly before the sub-prime mortgage crisis steamrolled ACQ.[29] Ultimately rescued by Dubai investors, Sino changed its name to Emivest Aerospace. TPJ's earlier TEF report did not discuss Sino Swearingen because TEF's website did not mention this failed deal.

IV. Non-Performing Deals

TEF recipients that failed to meet job targets in their original TEF contract and could not cover the shortfall with surplus job credits accumulated in previous years. All but one of the amended deals listed in the next section also qualify as "non-performing" contracts.[30]

Cabela's

When Cabela's approached Texas about building two superstores, the Nebraska sporting-goods retailer let the Lone Star State know that it had to bend over to get on the receiving end of this honor. Cabela's Vice President David Roehr wrote the Governor's Office in late 2003 to recap conditions for the deal. Roehr said the state would intervene with local governments to "initiate eminent domain" for any infrastructure the company might desire and to create tax increment districts "to capture certain sales tax, real estate tax, inventory tax and lodging tax" to repay bonds issued to create Cabela's-friendly "Tourism Districts." [31] If local governments erected new water towers near these districts, Cabela's would get to paint its logo on them. Texas also would "identify possible available locations and billboards…for signage that will advertise the Retail Centers and the Tourism Districts…at little or no cost for a minimum of twenty (20) years." To finish skinning Texas with its own Bowie knife, the Cabela's executive reminded the state that it "will work to make any State-owned taxidermy available to Cabela's at no charge for display in the Retail Centers."

TEF awarded Cabela's up to $600,000 in November 2004 to sink $120 million into two superstores in Buda and Fort Worth.[32] The agreement floridly describes Cabela's stores and their economic impacts. It says that the two stores will spur "new hotels, entertainment parks, restaurants and complimentary retail stores…expected to total over $250 million and create an additional 2,000 Texas jobs." Instead, the company's last compliance report covering 2008 said that its two stores produced just 241 or the 400 relatively low-paying jobs that they had promised to deliver.[33] The company alternately has blamed its lackluster results on such things as hurricanes and high gas prices. Cabela's last TEF report also downplayed promised economic ripple effects. Due to the crisis, the report says, a hotel and two apartment buildings slated to be built near the stores were put on hold. TEF recovered $177,288 from Cabela's, or 44 percent of its state funds. Nonetheless, a June 2010 report posted on TEF's website gave no indication that the Cabela's dog won't hunt. The TEF report credits this project with creating *600* jobs. That's 359 more jobs than Cabela's documented in its last compliance report. The best fish stories count the big ones that got away.

FlightSafety International

Warren Buffett's Berkshire Hathaway acquired the pilot-training company FlightSafety International in 1996. TEF awarded FlightSafety $720,000 in 2009 to invest $116 million in its Irving training facility. The deal promised to create 125 new Texas jobs by 2012 and to maintain them through 2017. FlightSafety pledged to deliver 25 new jobs by its first deadline at the end of 2009. Instead, it reported a net loss of four Texas employees. "The recession dealt a particular blow to our business as the use of private aircraft and the limited purchase of new private jet aircraft compounded our problem," FlightSafety said. TEF reported in June 2010 that it had not dispersed any money to FlightSafety nor imposed any penalties on this project that stalled on the runway.

Hilmar Cheese Co.

Ten months after California hit Hilmar Cheese Co. with a record environmental fine (see "California's Big Cheese" below), TEF awarded the same company $7.5 million in late 2005 to invest $190 million in a new cheese factory in the Panhandle town of Dalhart. Hilmar officials said they were attracted to Texas by its "common-sense approach to regulation."[34] Cheered in Dalhart when he announced the new plant in 2005, Hilmar Chair Richard Clauss said he "never got a welcome like that in California."[35] Hilmar pledged to create 376 new jobs directly by 2015. It also promised to spur another 1,586 "associated" jobs at new dairies created to supply the Hilmar factory. This cheese deal ripened slowly. By the end of

2009 Hilmar reported that it had created 191 direct new jobs and 306 associated jobs, falling 28 jobs short of its pledge. Hilmar also said that its compliance report covering 2008 had overstated the number of indirect jobs created at its supplier dairies by 32 jobs. "The low milk price and high feed costs that existed for much of 2009 heavily damaged the local dairy industry," Hilmar reported. As a result of shortfalls, Hilmar had to repay the state $612,579 as of June 2010 (8 percent of its state funding).

California's Big Cheese

A 2004 investigative report on Hilmar Cheese Co. found that, "For more than a decade, California water-quality enforcers have given the world's largest cheese factory a free ride, sparing the politically connected company millions of dollars in required sewage treatment and allowing it to foul local water supplies and the air of nearby neighborhoods." [1] This *Sacramento Bee* expose noted that Hilmar was "among the first of Governor Gray Davis' major donors to switch to Arnold Schwarzenegger" during California's 2003 gubernatorial recall campaign. New Governor Schwarzenegger then tapped Hilmar founder Chuck Ahlem as undersecretary of agriculture (Ahlen's son David became the manager of Hilmar's Texas plant). During the late 1990s, Chuck Ahlem had served on the Central Valley Regional Water Quality Control Board.[2] This agency later documented that Hilmar had dumped hundreds of thousands of gallons of wastewater a day for years, attracting hordes of flies, quintupling groundwater salinity and triggering thousands of environmental violations. After Ahlem complained to the water board in 2001 about its Hilmar probe, staff regulators said that they were told "to back off." Six weeks after the *Sacramento Bee* published its expose, the board fined Hilmar $4 million and Chuck Ahlem resigned his state agricultural post to focus on Hilmar's regulatory issues (which it later settled for $3 million).[3]

1. "The World's Biggest Cheese Factory Fouled Water and Air for Years," *Sacramento Bee*, December 12, 2004.
2. Appointed by Governor Pete Wilson.
3. "Hilmar Settlement Reached," *Sacramento Bee*, March 17, 2006.

Huntsman Corp.

In mid-2005 TEF awarded Utah-based Huntsman Corp. $2.75 million. Huntsman pledged to invest $226 million to expand its chemical facilities in Odessa and Port Neches and to build new administrative and research offices in the Woodlands. The deal promised to create 326 high-paying new jobs by the end of 2009. Huntsman had a strong start, racking up a surplus of 116 extra jobs by the end of 2005. Then it began paring its payroll. Huntsman reported that it had 265 new jobs by the end of 2009, 61 jobs short of its target. Citing "the global economic recession," Huntsman asked the Governor's Office for "forbearance," seeking "a deferment of our 2009 job target requirement until regional, national and global economic conditions improve." TEF reported in June 2010 that it had fined Huntsman $106,811 (4 percent of its state funding).

KLN Steel Products

TEF awarded KLN Steel Products $900,000 in mid 2008 to invest $25 million in the expansion of its San Antonio plant that makes office furniture. The deal promised to create 200 jobs by 2009 and to maintain them through 2015. KLN's 2009 compliance report claims 301 full-time employees without specifying if these were "new employees" beyond the 200 workers that KLN reportedly employed when it signed its TEF contract. The Governor's Office reported that KLN's numbers cover its *total* workforce. This means that the company posted a net increase of 101 new employees, 99 short of its pledge. TEF reported in June 2010 that it had not imposed any penalties on KLN.

Samsung Austin Semiconductor

TEF awarded $10.8 million to Korea-based Samsung Electronics in 2005 to invest $2.5 billion in a new chip plant next to an existing one in Austin. The city threw in another $48 million in property-tax breaks and other incentives; Samsung later solicited a state sales tax refund of up to $3.75 million.[36] Samsung pledged that by the end of 2009 the new plant would create 900 new jobs, while maintaining at least 300 preexisting Austin jobs. The contract says that the 900 jobs must be above and beyond what Samsung employed when the deal was signed (separately reported to be around 1,250 people).[37] It further commits Samsung to employ a total of at least 1,895 workers at its Austin facilities for the years 2010 through 2019. A Samsung spokesman told the *Austin Business Journal* that the company employed about 1,000 people locally in January 2010, about half of what it employed two years earlier.[38]

Samsung's target by the end of 2008 was 375 new jobs,[39] with the company reporting a cumulative total of 478 new jobs—or a surplus of 103 extra jobs.[40] Nonetheless, the Governor's Office said that Samsung was not entitled to record a job surplus because it missed the deadline for filings its 2008 compliance report. Moreover, Samsung's Austin workforce has been under stress. The 478 new jobs that Samsung reported in 2008 were down from the 827 new jobs that it had reported the year before.[41] Samsung reported in mid 2009 that it was laying off from 500 to 550 employees while it renovated its old plant to incorporate it into the new, highly automated plant. The company said it expected to hire back no more than 200 workers when it finishes the renovation in 2010.[42] "You don't need as many people," a Samsung spokesman told KXAN News, "you have a lot of robots back there."[43]

TPJ's previous report analyzing 2008 compliance reports categorized Samsung's TEF agreement as "troubled." Thereafter, Samsung announced in June 2010 that it would create approximately 500 new jobs by investing $3.5 billion in its Austin-based Fab 2 plant. The *Austin American-Statesman* later reported that the company could add as many as 1,600 workers by the end of 2011.[44] "When we come back around next time, we might be taking them out of the 'troubled' category," a TPJ spokesperson told the *Austin Business Journal* at the time.[45] Yet TPJ's current review of this project hit snags. Samsung spokesperson Bill Cryer said in 2010 that Samsung had previously reported new jobs at the old Fab 1 plant to TEF, even though its TEF contract only applies to jobs "at the new Austin fabrication facility."[46] Citing Cryer, the *Statesman* reported in early 2010 that "Samsung's agreement with the state primarily refers to the total number of workers at its complex, which includes hundreds of contractors and employees of Samsung suppliers."[47] While Samsung's TEF contract does cover direct hires and contract workers, it does not count employees of Samsung suppliers. Samsung reported that it had 1,338 contract workers at the end of 2009, or 1,038 more than its target of 300 contract workers. At the same time, it reported that it had 111 direct employees, which fell 489 short of its target of 600 staffers. Samsung's TEF report suggests that it covered this deficit with 652 surplus direct-job credits from previous years. Yet this contradicts TEF's report that Samsung had no surplus job credits. For these reasons, TPJ concluded that Samsung did not comply with its contract in 2009. While its announcement that it will hire 500 new workers by the Spring of 2011 is good news, Samsung must add almost 500 *direct hires* by the end of 2010 to meet it next jobs target. TEF reported in June 2010 that it had imposed no penalties on Samsung. That same month, Governor Perry visited Samsung's Korean headquarters on a trade junket.[48]

Samsung donated $1 million to the Austin-area United Way in September 2010 to assist poor kids.[49] This charitable act by a company bagging at least $63 million worth of handouts and tax breaks from state and local governments raises questions. Are those kids best served by this shell game? Or would they be better off in a world where private companies fully financed their own factories and paid all their taxes?

Sanderson Farms

Mississippi-based Sanderson Farms landed a $500,000 TEF grant in 2006 to invest $73 million in a new chicken hatchery and processing plant in Waco. The deal promised to create 1,312 jobs by the end of 2008. TEF paid Sanderson $381 per targeted job, making these the cheapest TEF jobs on record. TEF requires these jobs to pay an average annual gross compensation of $18,720, which makes them the second-lowest-paying TEF wages on record. The jobs in question appear to have a life expectancy not much greater than that of a Sanderson fryer. The 2006 TEF contract only requires Sanderson to maintain the jobs through 2009. After Sanderson fell 43 jobs short of its target in 2008, the chicken company petitioned the Governor's Office to count 78 contract chicken growers not covered by its TEF contract. That fowl idea didn't fly. Sanderson performed worse in 2009, falling 200 jobs short of the promised 1,312 jobs. TEF reported in June 2010 that it had fined Sanderson $81,891 (16 percent of its funding).

Santana Textiles

TEF awarded $1.65 million in August 2008 to Brazil-based Santana Textiles to invest $170 million in a new denim plant in Edinburg by 2010. Santana pledged to create 800 low-paying jobs there by 2014, including 103 by the end of 2009. The denim deal faded fast. Santana reported in early 2010 that it is "still working towards the development" of the plant that has not produced any jobs. To build the plant Santana now is soliciting additional public funding. It reported that the Edinburg Economic Development Corp. has pledged to provide a $5 million loan. The jeans company also is seeking to borrow $10 million from the Texas Product Development Fund and New Market Tax Credits. Company executives and local government officials met with the Governor's Office in late 2009 in an effort to amend the contract to delay its job targets. TEF has a contractual right to terminate the agreement and recover its costs if Santana failed to meet its targets. Instead, TEF reported in April 2010 that it fined Santana $64,496 (8 percent of its TEF funding).

Sematech

The federal government and computer chip manufacturers created the Sematech research consortium in Austin in 1987. TEF awarded $40 million to Sematech in 2004 to build its Advanced Material Research Center (AMRC) in Austin.[50] Texas' taxpayer financed Emerging Technology Fund later gave Sematech $5 million more. Despite the big payout, TEF did not require Sematech to hire one new worker. The deal just requires Sematech and AMRC to "maintain" a combined total of 400 employees through 2011.[51] The $40 million that TEF paid to *maintain* 400 jobs make these TEF's priciest jobs of all time ($100,000 apiece for preexisting jobs). Nonetheless, available evidence suggests that Sematech violated its contract and the Governor's Office let it slip across the border—without a chase by the Texas Rangers.

Sematech shred its TEF commitments in 2007. That's when then-New York Governor Eliot Spitzer announced that Sematech "made a financial commitment of $400 million" to "locate its headquarters in Albany."[52] The Albany deal abrogated Sematech's pledge not to "establish any new significant facility outside of Texas." Indeed, under that TEF contract, Sematech could not even "negotiate with any foreign national or domestic state or local governmental entities" to do so for seven years. The TEF contract defines a prohibited "significant facility" as one in which the Sematech invests at least $25 million. Documents that Good Jobs New York obtained from New York's Empire State Development Corp. reveal that Sematech has been constantly negotiating with New York since 2003. In once such 2008 deal, New York formally agreed to give $300 million to Sematech, Inc. of Austin to increase its Albany payroll from 250 to 700 jobs by January 1, 2011.[53]

In an interview in early 2010,[54] gubernatorial Assistant General Counsel Michael Bryant said Sematech has pledged to keep its headquarters in Austin and TEF regards the International Sematech program in Albany as a mere extension of Sematech's preexisting presence there. "As far as we're concerned, they haven't gone against that [no-compete] provision in the agreement," Bryant said. While Bryant distinguished between Sematech, Inc. and Sematech International, the TEF agreement covers *both*.[55] The Albany deal triggered an internal debate over whether the Governor's Office should recover taxpayer funds from Sematech, according to the *Austin American-Statesman*.[56] "They really shouldn't have been having those conversations with New York," the *Statesman's* source said. "There was an argument that we could have whacked them. We chose not to." Sematech, which accused Texas of reneging on its contractual obligation to try to help Seamatech raise another $120 million, recruited Yankee Daniel Armbrust as its new CEO in late 2008. Refusing to say if he would live in Austin or New

York, Armbrust told the *Statesman*, "You tend to invest where the strategy is working, and I would say it that it is working there" [Albany].[57]

Sematech also appears to have reneged on its promise to maintain 400 local jobs. Sematech sold its Austin fabrication plant to California-based SVTC Technologies in late 2007, telling other Austin workers that their jobs were moving to Albany.[58] Given that this facility accounted for almost half of the "more than 400 [Sematech] workers" in Austin,[59] this sale imperiled the company's job promises. Sematech's TEF compliance reports indicate that its Texas employment peaked at 523 jobs for 2006.[60] After it sold the fab plant, Sematech stopped directly reporting jobs to TEF. Instead, it reported that "the average of direct employment positions for the first five years (2004-2008) was 477," suggesting that Sematech had 277 Texas workers in 2008.[61] This figure is more than twice what internal company documents reported. An internal Sematech report from early 2009 lists 131 employees in Albany and just 124 in Austin. To pad TEF-reported job numbers, the *Austin American-Statesman* reported that Sematech continued to count workers at the plant that it had sold in 2007.[62] Defending this deception, the Governor's Office cited a contract clause that lets Sematech count "non-employee researchers." Yet the plant's new owner is not a member of Sematech's consortium and the TEF contract requires Sematech to "establish, operate and manage, directly or indirectly" the plant that it sold to SVTC. To let Sematech keep $40 million, the Governor's Office had to redefine SVTC's manufacturing workers as Sematech's "non-employee researchers." A stretch becomes a fraud when it's stretched too far. The Governor's Office did not release Sematech employment figures for 2009.

Undaunted by Sematech's failure to maintain 400 pre-existing, in-house jobs, a June 2010 report posted on TEF's website claims this project created *4,000* jobs. TEF fished this big number out of Sematech's 2004 TEF contract, which claims that the deal "has the potential to generate more than 4,000 other indirect jobs through companies that have and will continue to locate near ISMT." ISMT is the contract's abbreviation for International Sematech—now located in Albany, New York.

Superior Essex Communication

Atlanta-based Superior Essex Communication received a $250,000 TEF award in 2005 to invest $7.6 million in expanding a Brownwood plant that makes communications wires. Superior Essex pledged to create 50 new jobs by the end of 2005 and maintain them through 2019. Living up to its name, Superior exceeded its job target in 2005, reporting 86 new jobs. But Superior's wires got crossed and the plant's payroll has dwindled ever since.[63] Blaming the "overall economic downturn," Superior reported that it fell eight jobs short of its 50-job target in 2008. Superior drew on surplus job credits from previous years to cover the deficit. Superior again reported that it was eight jobs shy of its 50-job target at the end of 2009. This time there was no surplus to cover the deficit. TEF reported in April 2010 that it recovered $749 from Superior (less than 1 percent of its funding).

Trace Engines

TEF awarded $465,000 in 2006 to Trace Engines to invest $9.7 million in a Midland plant to build engines for small aircraft. The Midland Development Corp. awarded Trace another $400,000 in public funds. The deal promised to create 114 jobs by 2013. While Trace's TEF application listed Oklahoma as a competitor for the plant, the company's top investors live in West Texas and intended to locate there from the get go.[64] "When we started more than two years ago," Trace board member L.D. 'Buddy' Sipes told the *Odessa American* in 2007, "a lot of people saw it as a way to diversify the [local] economy."[65] Losing altitude, Trace reported that it had created 20 jobs by the end of 2009, 32 jobs short of its pledge that year. "Recent economic events have slowed the aviation industry dramatically," the company reported. Trace requested that "no penalties be imposed…given our large contribution to Midland's tax base." TEF reported in June 2010 that it fined Trace $17,930, or 31 percent of its funding to date.

Tyson Foods

TEF awarded Arkansas-based Tyson Foods $7 million in 2005 to invest $100 million in a new meat plant in Sherman by 2009. Tyson, which also received $3 million for job training from the state Skills Development Fund,[66] pledged that the plant would provide 1,600 low-paying jobs by the end of 2009. Tyson reported that it employed 1,498 people at the new Sherman plant by the end of 2009—102 short of its pledge.[67] In an unusual provision, Tyson's TEF deal expresses a contractual "goal (but not requirement) that Texas residents comprise at least ninety percent (90%) of the hourly workforce of Tyson." Separately, the world's largest meat company successfully defended itself in 2008 from charges of employing illegal immigrants at its U.S. plants by arguing that it did not knowingly hire illegal workers.[68] Tyson's compliance reports did not say how many of its employees were Texas residents. Tyson also settled a U.S. Department of Labor complaint in 2010 by agreeing to pay 3,000 Alabama workers $500,000 in back overtime wages.[69] TEF reported in June 2010 that it had fined Tyson $26,899 (less than 1 percent of its TEF funding).

U.S. Bowling Congress

Governor Perry announced a TEF grant in March 2008 to the U.S. Bowling Congress to spend $13 million on a new headquarters in Arlington. For some reason, the parties did not finalize the contract granting the Bowling Congress $610,000 until May 2009. The deal transfers a bowling museum and hall of fame from St. Louis to Texas. It also transplants the headquarters of the governing body of bowling from Milwaukee to Arlington. The deal pledged to create 175 new jobs by 2009 and retain them through 2013. According to the belated contract, 135 of the jobs already existed by the time the deal was finalized. The Bowling Congress missed some pins in 2009 but avoided the gutter. It reported that it created 159 jobs, 16 short of its promise. TEF reported in 2010 that it fined the Bowling Congress $26,936 (9 percent of its funding). A June 2010 report on TEF's website credits this project for creating 198 jobs—23 more than the contract stipulates. Upon relocating to Texas, did the venerable U.S. Bowling Congress authorize ten-pin mulligans?

V. Amended Deals

TEF contracts that the Governor's Office and grant recipients have formally amended at least once.[70] *Amendments typically lower the recipient's job targets or extend deadlines for producing promised jobs. If evaluated by the terms of their original contacts, all but one of these amended deals also are "non-performing."*[71]

Albany Engineered Composites

TEF awarded $1 million in early 2008 to New York-based Albany Engineered Composites, which makes fabrics used in the paper and aerospace industries. Albany pledged to invest $40 million to expand its Boerne plant by the end of 2008 and to create 337 jobs by 2014. In its first year, Albany reported that it created just 17 of the 55 promised jobs. Citing "the most severe recession in decades," the fraying fabric maker reported that it shuttered its Eclipse Jet unit that was supposed to generate 40 percent of the promised jobs. The parties amended the deal at the end of 2009, slashing the total jobs commitment from 337 jobs to 137 jobs. The amendment retroactively eliminated Albany's requirement to produce *any* new jobs in the recessionary years 2008 and 2009. Under the original deal Albany had to create 103 jobs by the end of 2009. By the end of 2009, Albany reported that it employed a total of 168 people, or 13 fewer workers than it had employed when it first signed a TEF contract. This lackluster performance "is in compliance with the amended targets," Albany reported. The amendment shifts Albany's first target of seven new jobs to the end of 2010. The amendment also slashes Albany's TEF award from $1 million to $300,000. TEF reported in June 2010 that it had recovered $29,716 from Albany (10 percent of its funds). The same TEF report credits this project with creating 337 jobs, despite the fact that the amendment that the Governor's Office signed six months earlier dropped this target to 137 jobs.

Allied Production Solutions

TEF awarded $800,000 in October 2007 to Allied Production Solutions, which makes storage tanks for the oil and gas industry.[72] Allied pledged to invest $16 million to move its Oklahoma headquarters just over the Texas line to Gainesville, and to build a factory there to produce metal tanks. The contract calls for a total of 200 new jobs in Gainesville by the end of 2010, including 153 jobs by the end of 2009. Citing "significant reduction in oil drilling activity," Allied reported just 74 new jobs by the end of 2009—79 jobs short of its original promise. Allied reported that it had thus far failed to build a pledged facility to make fiberglass tanks that was supposed to employ 50 people.[73] As the tank deal tanked, TEF amended Allied's contract in August 2009, giving the company two additional years to meet its job targets. The amended deal imposes no job requirements whatsoever for recession-weary 2009. TEF reported in June 2010 that it had not imposed any penalties on Allied.

Authentix

TEF awarded this producer of counterfeit-detecting nanotechnology $1 million in October 2007 to invest $6.6 million in the expansion of its Addison operations. Authentix pledged to create 120 high-paying jobs by 2012. The politically connected Carlyle Group acquired Authentix in 2008. That year Authentix reported that it created 13 new jobs, 12 short of its pledge. "Authentix is preserving its cash position and growing at a slightly slower pace," the company reported. As a result, counterfeit detectors in the Governor's Office could have terminated the deal and recovered state funds with interest. Instead, the parties amended the agreement in late 2009, granting Authentix another year to deliver the 120 jobs. The short-term impact was more pronounced. While the original deal required Authentix to produce 57 new jobs by the end of 2009, the amendment does not require the company to create any additional jobs that year (contractually amending "nano" jobs into "nada" jobs). Authentix reported that it had created a total of 23 new jobs by the end of 2009, 34 short of its original pledge. TEF reported in June 2010 that it fined Authentix $32,116 (4 percent of its dispersed state funds). "In the second half of 2009, Authentix began to see signs of a recovery," the company reported. "Fast forward to 2010, and we are poised to honor our TEF job creation pledge. Authentix is once again growing quickly and has budgeted to hire a minimum of 26 new employees this year." Doing so would result in 49 new hires for 2010—32 short of its original pledge.

Fidelity Global Brokerage

TEF awarded $8.5 million to Boston-based Fidelity Global Brokerage Group in early 2007 to invest $200 million in expanding its Westlake operations. Fidelity pledged to create 1,535 high-paying new jobs by the end of 2009. The company reported that it exceeded its 2007 target of 651 jobs, amassing 132 surplus job credits. Fidelity then reported such a severe job deficit in 2008 that it fell 79 jobs short of its promise even after cashing in its surplus-job credits. The company goosed this job count slightly by lobbying TEF to count jobs at Fidelity affiliates excluded from the original agreement.[74] The brokerage then brokered an amendment in late 2009 that slashed Fidelity's job commitments from 1,535 to 850 jobs. The amendment also gives Fidelity five more years to meet the smaller job target. Under the original deal, Fidelity had to create 1,535 new jobs by the end of 2009. Wiping away all previous job commitments, the amendment just requires Fidelity to create a total of just 175 new jobs by the end of recessionary 2009. Fidelity reported that its total new-job count sunk to 219 at the end of 2009, or 1,316 jobs short of its original pledge. TEF reported in June 2010 that it recovered $484,068 from Fidelity (6 percent of its total). The amendment requires Fidelity to repay $4 million of its $8.5 million TEF grant.

Another oddity merits mention. The amendment says that "Fidelity had 2,900 jobs" in Texas when the original deal was signed. Establishing Fidelity's baseline employment as the company ran into trouble with its job targets a year after signing the original contract is peculiar. All the more so given that the *Dallas Morning News'* contemporaneous coverage of the deal reported in 2007 that Fidelity then employed 3,400 Texans.[75] A subsequent deal to lower this baseline could magically convert 500 preexisting jobs into more than half of the "new" ones mandated by the amended agreement.

HelioVolt Corp.

Austin-based HelioVolt is developing thin materials that convert sunlight to electricity. TEF awarded the photovoltaic company $1 million in early 2008 to invest in a $60 million expansion of its Austin facilities by June 2009. This came on top of $600,000 in property-tax breaks from the City of Austin.[76] The deal promised 158 new, high-paying jobs by 2010, retained through 2015. In recent years HelioVolt repeatedly postponed the date when it said it would start commercial production, a harsh reality that has eclipsed its job promises. An amendment in late 2008 modestly reduced the penalty that HelioVolt must pay for missing job targets.[77] Shortly before this amendment, the *Austin American-Statesman* reported that the company "expects to have 300 employees by the end of 2009."[78] Instead, HelioVolt amended its TEF contract a second time in late 2009, granting the company two additional years to reach its job targets. "Due to the economy, many of us have not created the number of jobs that the state was hoping for," HelioVolt Vice President Iga Hallberg told the *Austin American-Statesman* shortly thereafter.[79]

In its previous TEF report, TPJ wrongly considered HelioVolt to be TEF compliant in 2008. This was based on the erroenous presumption that the 110 jobs that HelioVolt reported in 2008 were all new. They weren't. The second amendment of late 2009 says HelioVolt paid penalties to cover a 2008 job shortfall. The amendment also belatedly says that the parties agree that HelioVolt had 35 employees at the time of the initial TEF agreement, setting the baseline from which "new" jobs are calculated. If HelioVolt padded its 2008 compliance report with those 35 old jobs, as it appears, then it created just 75 new jobs in 2008—34 short of its target.[80] HelioVolt reported a total of 75 employees at the end of 2009. Subtracting the 35 employees it reportedly had when it signed the original TEF deal, HelioVolt had just 40 new employees. This met its amended target but fell 113 jobs short of the 153 jobs that it originally pledged to deliver by that time.

Lee Container Corp.

TEF gave Georgia-based Lee Container $300,000 in 2005 to invest $5.6 million in a Nacogdoches plastic-bottle plant that promised 105 'full-time" new jobs by 2010. The TEF contract requires these jobs to pay an average annual gross compensation of at least $16,752, making them the worst-paying jobs in TEF history. As time went on, the bottles coming off Lee Container's assembly line increasingly contained messages of distress. Citing performance bottlenecks, the parties amended the agreement in late 2009, granting Lee four extra years to produce the 105 promised jobs. The amendment does not require Lee to produce *any* new jobs in 2009 or 2010 (originally it would have had to hire 30 new people in this recessionary period). Lee reported that it created 44 jobs by the end of 2009, including six paid through an employment agency. This was less than half of the 90 new positions it originally promised to create by that deadline and fell six jobs short of what it pledged in the 2009 amendment. Lee blamed its performance on disruptions of its main customers "as a result of Hurricane Ike" in late 2008." TEF reported in June 2010 that it fined Lee $19,080 (6 percent of its state funding).

Lockheed Martin Corp.

TEF awarded $5.48 million to Maryland-based Lockheed Martin Corp. in 2007 to invest $58 million in a new Houston plant for its NASA Orion contract. Lockheed pledged to create 800 new jobs by the end of 2008.[81] The company reported 703 new employees at the end of 2008,[82] for a shortfall of 97 jobs. Yet that compliance report says, "We are pleased to inform you that we exceeded the 600 job creation … level by 17%." Asked why that report's job target was so much lower than the one in its TEF agreement, Lockheed's Terry Ahern said that Lockheed amended its TEF contract "when we got hit by federal cutbacks." Oddly, the Governor's Office had not provided this amendment in response to an earlier Public Information Act request. The Governor's Office later said that the amendment that Lockheed relied upon in early 2009 was not finalized until the end of that year. Hurtling through a time warp, Lockheed rocket scientists recognized one year in advance that this amendment was a *fait accompli*. The amendment lowered Lockheed's job targets from 800 new jobs to 550. The revamped deal requires Lockheed to maintain 550 new jobs from 2007 through 2014. It also lowers Lockheed's grant from $5.48 million to $4 million—unless it produces the 800 new jobs it originally promised. Lockheed reported that it created 677 direct-hire jobs by the end of 2009. This fell 123 jobs short of its original pledge but surpassed its amended target of 550 jobs. TEF reported in June 2010 that it had not penalized Lockheed. The same TEF report credits this project with creating 800 jobs, even though the amendment signed six months earlier dropped that target to 550 jobs.

Martifer-Hirschfield Energy

TEF awarded Portugal-based Martifer Energy Systems $945,000 in September 2008 to invest $40 million to build a wind-tower plant in San Angelo (the project later became a joint venture of Martifer and Hirschfeld Wind Energy Solutions). Martifer promised to create 225 new jobs by 2012, including 10 by the end of 2008. With those jobs blowing in the wind, TEF had cause to terminate the deal. Instead, it amended the deal in January 2009, granting Martifer four extra months to produce the jobs. Martifer still failed to deliver, reporting that May that it made five of the 10 promised hires. Martifer pledged to hire 11 more people "once the individuals who will fill such positions obtain Unites [stet] States work visas." By the end of 2009, Martifer reported creating 11 jobs—111 jobs short of its quixotic pledge. Martifer CEO Pedro Dinis attributed the shortfall to "the financial crisis." TEF reported in June 2010 that it recovered $12,180 from Martifer, or 2 percent of the company's state funding to date. The Governor's Office told the Associated Press in January 2010 that it signed an amendment that reduces Martifer's grant by $100,000.[83] The Governor's Office did not release this amendment under the Public Information Act.

Motiva Enterprises

A joint venture of Shell Oil and Saudi Aramco, Motiva Enterprises landed a $2 million TEF award in 2006 to invest $3.5 billion to expand its Port Arthur plant into the nation's largest refinery. The deal promises to create 300 jobs by the end of 2010. Although Motiva's first job targets were in 2009, it reported creating 70 new jobs by the end of 2008, racking up surplus job credits. That same year, Motiva laid off workers and rolled back the refinery's completion date from 2010 to 2012.[84] Citing the recession, the parties refined their contract in late 2009. Although this amendment says Motiva made its 2009 target by creating "at least 140" new jobs, the revised deal gives the company two additional years to meet its full target of 300 jobs (also extending the job retention period three years). The amendment cuts the number of jobs that must be direct hires from 250 to 200. The revised deal says that the parties agreed that the company had a preexisting "threshold" of 970 jobs when the original agreement was signed three years earlier. Based on this formula, Motiva reported that it had 219 net new employees at the end of 2009, or 79 more than its target of 140 jobs. Of all the grantees that have amended their TEF contracts, Motiva is the only one that reported that it met its original TEF job targets for 2009.

Rackspace US

TEF awarded $22 million in 2007 to Internet-hosting giant Rackspace of San Antonio to invest more than $100 million in a new headquarters. The deal promised 4,000 new jobs by 2012. Rackspace reported that it exceeded its 2008 target of 475 new jobs by 54 extra employees. Citing the "global economic recession," the parties amended the deal in July 2009 to slash job commitments that were "no longer feasible." The amendment slashes the deal down to $8.5 million for 1,225 jobs. It allows Rackspace to pocket the full $22 million if it does meet its original 4,000-job pledge, giving the company three additional years to hit this target.[85] As such, the amendment downgrades higher job numbers that once were contractual commitments to optional bonuses. A June 2010 TEF report continued to claim that this deal created 4,000 jobs, despite the year-old amendment that makes this target optional. Rackspace reported that it produced just 617 new jobs by the end of 2009. This performance took offline about half of the 1,225 jobs that it originally pledged to deliver by that time.

Rockwell Collins

Iowa-based Rockwell Collins makes electronic systems for the communications and aviation industries. TEF awarded the company almost $1.7 million in late 2007 to invest $6.7 million to expand its Richardson facility. The deal promised that by the end of 2009 Rockwell would add 334 new jobs to the 947 workers that the company already employed in Texas. In a March 2008 amendment, the parties lowered this baseline used to count "new" Rockwell employees, arguing that the original agreement overstated the number of Texas employees that Rockwell had at the time by 15 workers.[86] Shortly before this revision, Rockwell reported that it had created 128 new jobs for 2008—121 short of its target.[87] That same report says the company was negotiating another amendment "to take into account headcount issues related to the country's economic downturn." Although the Governor's Office did not release this second amendment, Rockwell's 2009 compliance report said that it slashed the company's 2009 job target from 334 new jobs to 105. A June 2010 TEF report also lists this lower job target and reduces Rockwell's grant award to $839,196. Rockwell reported 99 new hires by the end of 2009, falling 235 jobs short of its initial pledge and six jobs short of its rolled-back target. TEF, which reported that Rockwell started 2010 with 26 surplus job credits, did not report any Rockwell penalties as of June 2010.

Texas Energy Center

TEF awarded the non-profit Texas Energy Center $3.6 million in 2004 to invest $20 million to build an alternative energy research facility in Tom DeLay's hometown of Sugar Land. The Center is supposed to indirectly spur the creation of 1,500 jobs. Under the original deal, these jobs were to be in place by the first day of 2009. At that time the Center claimed to have spawned 1,350 jobs. An amendment that the parties signed in late 2005, however, converted this apparent deficit into a surplus. The amendment only required 525 indirect jobs by the start of 2009. Unlike the original agreement, the amendment also allowed the Center to aggregate part-time positions into "full-time equivalents." Part-timers boosted the Center's 1,350 jobs on New Year's Day 2009 up to 1,405 jobs.[88] In this way, what would have been a deficit of 150 jobs under the original agreement was amended to a surplus of 880 jobs. By New Year's

Day 2010, the Center claimed credit for indirectly spurring 1,445 full-time equivalents. This was 55 jobs shy of its original pledge but 920 jobs beyond the Center's amended target. Waco Democratic Rep. Jim Dunnam criticized the Center in 2006 for signing a $20,000 federal lobby contract with former Tom DeLay chief of staff Drew Maloney on the same day that it signed its original TEF agreement (Governor Perry's Office of Federal-State Relations also retained Maloney from 2002 through 2006).

Texas Institute for Genomic Medicine

TEF awarded $50 million in July 2005 to Texas A&M University and Houston-based Lexicon Genetics, Inc. (now Lexicon Pharmaceuticals) to establish the non-profit Texas Institute for Genomic Medicine. The Institute's mission is to amass a library of 350,000 cloned mouse stem cells. The *Houston Chronicle* revealed early on that three families controlling 17 percent of Lexicon's stock had contributed more than $325,000 to Governor Perry.[89] Announcing the grant in 2005, Governor Perry said it would "attract millions of dollars for medical research and lead to the development of life-saving medical treatments and therapies." The Institute then angled for a $50 million federal grant that fell through. The *Texas Tribune* reported that a 2006 A&M audit panned the Institute for failing to make contingency plans for the loss of these federal funds.[90] As the Institute became financially dependent on A&M, faculty complained that these research funds could be better used elsewhere.

The Institute pledged to create 5,000 jobs by 2015 and to maintain them through 2027 (A&M was responsible for 3,384 jobs and Lexicon for 1,616).[91] Not limited to direct hires, A&M can count any new job for which the Institute is "significantly responsible" through its efforts to attract or create biotechnology and drug-related positions in Texas. In practice, the Texas Workforce Commission credits the Institute for helping to create any *new Texas jobs* in industries encompassed by the "Governor's Biotech Cluster." Data provided by the Workforce Commission indicate that the Institute's job claims covered 24 diverse industries from soybean processing to diagnostic imaging centers.[92] Given that the Institute claims credit for all new Texas jobs in a variety of medical-research fields, it almost certainly claims credit for many of the same jobs that the University of Texas' TEF-subsidized Center for Advanced Biomedical Imaging also claims to have generated (see below). If so, this TEF project is cloning jobs, along with rodent stem cells.

After Lexicon defaulted on some of its initial job targets, the parties amended the agreement in 2008. The amendment relieved Lexicon of the need to produce any new jobs until 2012 and shifts the initial job burden exclusively to A&M.[93] Under the amended deal, A&M must directly or indirectly create 581 new jobs by the end of 2009. In its compliance report, A&M claimed credit for producing "1,921 actual jobs" for that period. But why stop there? This TEF contract contains a multiplier that awards A&M extra jobs credits if the average annual gross compensation for all claimed jobs exceeds $60,000.[94] In its compliance report for 2009, A&M reported that the multiplier cloned 1,921 actual jobs into credit for having created 2,727 jobs (cloned jobs are notoriously hard to count because they're genetically identical to one another). After four years of diligent cloning, the Institute claims to have amassed 12,250 surplus TEF job credits! This Aggie Institute arguably owes a debt to Jan Baptist van Helmont: the 17th Century Flemish scientist who discovered how to spontaneously generate mice from heaps of dirty rags and grain.

Vought Aircraft Industries

TEF awarded $35 million in 2004 to Irving-based Vought Aircraft Industries to expand its aviation-parts facilities in Texas.[95] Vought pledged to create 3,000 new jobs by the end of 2009 and maintain a total of 6,000 jobs through 2019. The contract permits Vought to count new Texas jobs created by its suppliers after 2011. Vought's original plan called for consolidating its Florida and Tennessee operations at the expanded Texas plant. These geographical consolidations were to account for half of the company's TEF job targets. The company reported in late 2005, however, that it no longer planned to move those operations to Texas. As Vought laid off 600 people in 2006, the *Dallas Morning News* reported that the struggling company might get to keep all its TEF funds no matter what.[96] Vought's TEF agreement is premised on the company signing a long-term lease for the headquarters that it built on U.S. Navy property. Absent such a lease, the agreement directs the state to seek additional public funds for the company or rollback the penalties that it faces for defaulting on its TEF commitments.

Vought's TEF deal requires it to create 3,000 *new* jobs by 2009 and maintain a total of 6,000 Texas employees through 2019. Vought reported that it created 864 new jobs by the end of 2009, falling 2,136 jobs short of its original promise. The company also reported that it had a total of 3,822 Texas employees at the end of 2009, or 2,178 short of its total payroll target. The Governor's Office tossed Vaught a parachute in late 2009. That amendment contains a nifty multiplier that grants Vought credit for phantom jobs if the average compensation paid to new employees exceeds the stipulated $53,000 per year. Using this formula, Vought inflated 864 actual new jobs in 2009 to credit for having created 2,056.32 new jobs! (Unconfirmed Internet reports suggest that Vought's missing 1,192.32 jobs are held by aliens employed in the company's classified UFO division.) Despite its phantom-job inflator, Vaught fell 944 jobs short of its target. The Associated Press reported that the Governor's Office amended the agreement again in early 2010, which "slightly lowered the number of jobs it had in place at the start of its contract" six years earlier.[97] Such revisionist history would boost Vought's "new" job count (the Governor's Office declined to provide this amendment in June 2010, saying it hadn't been finalized). TEF reported in June 2010 that it had recovered $944,000 from Vought, or 3 percent of its total.

VI. Troubled Deals

TEF recipients that complied with their 2009 job commitments but show signs that they may have trouble meeting future targets. Some "troubled" TEF recipients fell short of their 2009 job targets but covered their deficit with surplus job credits compiled in previous years.

JTEKT Automotive

TEF awarded $333,000 in early 2005 to a unit of Japan-based Koyo Seiko Co. to invest $30 million in a new auto parts factory in Ennis by late 2006. Koyo pledged to create 200 jobs by 2009 and maintain them through 2015. Shortly after the TEF agreement, Koyo and Toyoda Machine Works merged to create JTEKT Automotive. JTEKT reported 193 new jobs in 2008, well above its 150-job target. After its target increased to 200 new jobs in 2009, the company reported that its Texas payroll had fallen to 188 full-time employees, 12 short of its pledge. JTEKT reported that the auto industry "has been hit very hard by the economic downturn." The company had enough surplus job credits to cover its deficit.

Maxim Integrated Products

TEF awarded $1.5 million to Maxim in late 2004 to invest $90 million in building a new chip factory in San Antonio (four years later TEF awarded Maxim another $5 million for a failed plant in Irving). Maxim pledged to create 500 San Antonio jobs by the end of 2007 and maintain those positions through 2011. Maxim reported that it had 444 full-time employees at the plant at the end of 2009, 56 jobs short of its target. It also reported that it had another 97 temporary technicians, which weren't covered by the TEF contract. TEF reported that Maxim had 151 surplus job credits at the end of 2009, enough to cover its deficit.

Torchmark Corp.

TEF awarded insurer Torchmark Corp. $2 million in early 2006 to invest $27 million in moving its Alabama headquarters to McKinney. The deal promised to create 500 jobs by 2010 and maintain them through 2015. Torchmark reported that it created 337 new jobs by the end of 2009, three more than its target of 334 jobs that year. Although Torchmark's contract stipulates "full-time" jobs, the company reported that it aggregated 48 part-time positions into 24 "full time equivalents." Without these part-timers, the company fell 21 positions short of its pledge of 334 full-time jobs. Nonetheless, TEF reported in April 2010 that Torchmark had 349 surplus job credits saved up from past years, more than enough to cover any shortfall.

Washington Mutual Bank

TEF awarded $15 million in 2005 To Washington Mutual Bank (WaMu) to invest $50 million in a new operations center in San Antonio. The deal promised 4,200 new jobs by 2011, including 2,250 at the new facility. The timing could not have been worse. During the following year, WaMu cut almost 10,000 jobs, or about 16 percent of its national workforce.[98] In the largest bank failure in U.S. history, federal regulators seized the $300 billion WaMu in September 2008 (WaMu's political committee contributed $2,500 to Governor Perry's campaign as this ship was foundering in March 2008). Federal regulators immediately sold WaMu to JPMorgan Chase, which received $25 billion from the federal Troubled Asset Relief Program a month later. Within six months of this acquisition, JPMorgan announced the elimination of 12,000 more WaMu jobs nationwide.[99] A U.S. Senate subcommittee found in 2010 that internal WaMu probes had indicated that its lending policies were rife with fraud.[100] Dallas Mayor Tom Leppert sat on WaMu's asleep-at-the-wheel board from 2005 until October 2009.

Citing renovation delays at its new facility, WaMu missed its first job target in 2005, when it reported creating 356 jobs instead of the requisite 600. The Governor's Office wrote WaMu in March 2006, seeking to recover $207,400 for the company's shortfall of 244 jobs. Instead of enforcing the penalty like a mortgage lender, the Governor's Office appears to have informally granted WaMu a three-month extension to make up this job shortfall.[101] By 2008 WaMu's contractual TEF target increased to 2,400 new Texas jobs. The bank reported that it created 2,208 of them—192 jobs short of its target.[102] To derive this number, WaMu reported that it aggregated together part-time employees to calculate an unspecified number of full-time-equivalent jobs. The governor's office accepted these piecemeal jobs even though WaMu's TEF agreement stipulates "full-time employment positions."[103] For the remainder of its deficit, WaMu appears to have relied on surplus job credits from previous years. WaMu's TEF agreement required this troubled bank to produce 3,000 new jobs by the end of 2009, when WaMu still boasted 1,339 surplus job credits. JPMorgan reported that WaMu created 2,923 new jobs by that time, 77 jobs shy of its target. In the current economic environment, it's unclear if WaMu can deliver the 4,200 new jobs it pledged to maintain from 2011 through 2015.

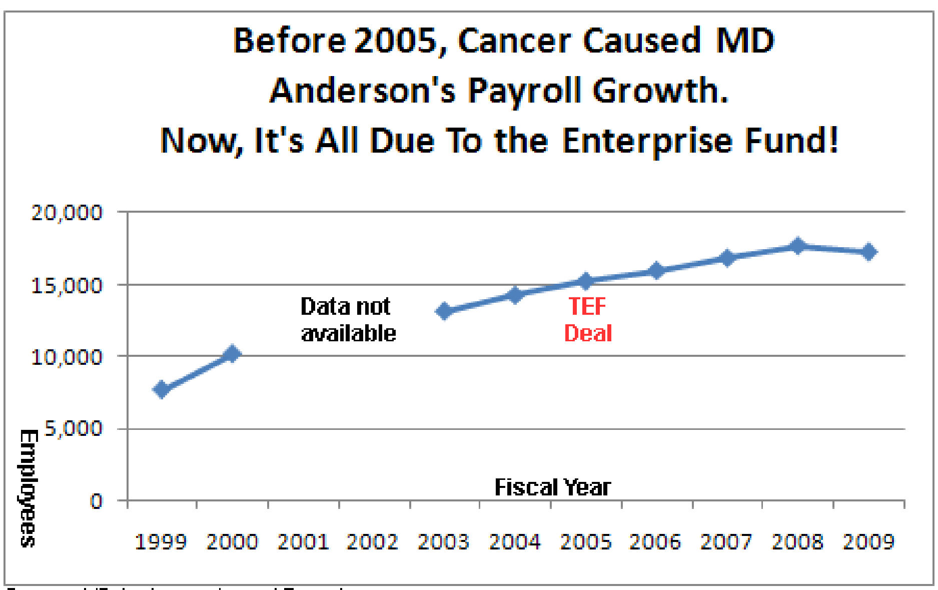
VII. Weak Deals

Fundamentally weak TEF contracts that the Governor's Office signed. One imposes no deadline for job creation. Another permits the recipient to claim credit for any new jobs in certain industries—no matter how nebulous the connection between those jobs and the TEF-funded project. One "non-performing" and three "amended" TEF deals discussed above also meet the criteria for "weak deals" (see Sematech, Texas Energy Center, the Texas Institute of Genomic Medicine and Vought).

Center for Advanced Biomedical Imaging

TEF awarded $25 million in 2005 to the University of Texas System to create the Center for Advanced Biomedical Imaging at Research Park next to Houston's Texas Medical Center. UT's Health Science Center and MD Anderson Cancer Center spearheaded the Center with General Electric's assistance.[104] The UT entities pledged to create a total of 2,252 new jobs by 2011. When their target was 1,555 jobs at the end of 2009, the UT entities already reported creating 4,780.51 jobs. How can this be?

While the TEF contract allows the UT Health Science Center and MD Anderson to count all new jobs at Research Park, a more expansive provision encompasses all new "jobs in support of research initiatives and clinical activity." It's difficult to conceive of what MD Anderson and UT Health Center jobs do not "support" research and clinical activity. New jobs that the UT entities claimed for 2008 include plumbers, police, pharmacy technicians, a dean's office communications specialist and an MDA Café cook. The UT entities also reported new employees in Austin, Brownsville, Dallas and San Antonio. Even though MD Anderson's payroll has grown like cancer for years, this TEF contract attributes all job growth after 2005 to a $25 million TEF grant. Dr. Kenneth Shine, UT's executive vice chancellor for health affairs, confirmed that UT does not limit itself to reporting Research Park jobs. "In negotiating the agreement," Shine wrote, the parties recognized that "It would be almost impossible to obtain data concerning job creation and salaries from all of the contractors, subcontractors, vendors and related entities that created jobs due to work at the Research Park."[105] Attributing all new jobs at MD Anderson and the UT Health Science Center to a $25 million TEF grant is easy—once you abandon any inkling of common sense.



Source: MD Anderson Annual Reports.

Texas Instruments

TEF awarded $50 million in March 2004 to beef up the University of Texas at Dallas' engineering program, which was launched by executives at Texas Instruments (TI). A major goal of this deal was to convince TI to invest $3 billion in a new computer chip plant in Richardson. The University and TI both signed TEF agreements the same day. While the preamble of TI's agreement says the new plant "is expected to employ up to 1,000 people," the contract contains no formal job targets.

With a state payout of $50,000 per expected job, the TI deal contains the second most expensive jobs in TEF history. After TI built the new chip plant, the building sat vacant for three years until TI announced in late 2009 that it would start production.[106] While the new plant was mothballed, TI laid off 424 Dallas-area workers.[107] TEF and TI terminated their agreement in October 2009. That termination agreement says that TI, which had not reported creating any jobs, "fully satisfied its obligations." The federal government awarded TI $51 million in tax credits in January 2010 to promote the same late-blooming plant.[108] TI said the plant would employ 250 people by the end of 2010—a fraction of the 1,000 workers touted six years earlier. The plant has the potential to employ 1,000 people if run at full capacity.[109] TEF makes no job claims for this project in a June 2010 report posted on its website.

VIII. Clean-Up Recommendations

Doling out taxpayer funds to private enterprises is controversial among liberals and conservatives alike. If continued, this controversial practice should be held to high standards and funded through straightforward appropriations (halting raids of unemployment insurance funds, as well as transfers between the Enterprise Fund and Emerging Technology Fund). To depoliticize this program, the legislature should establish a public advisory board to review and make formal, public recommendations on all proposed TEF agreements, amendments and terminations, as well as to make recommendations on TEF recipients that contractually qualify for the TEF death penalty. Final action on all proposed TEF agreements, amendments, terminations and death-penalty cases should be subject to the on-record approval of at least two of the following officials: governor, lieutenant governor and House speaker.

A precondition of TEF grants should be that the recipient is required to *directly* hire specific, significant numbers of Texans. TEF should prohibit grantees from claiming job credits for anyone that they do not hire directly, as well as from claiming job credits for employees who have no rational link to a TEF grant. TEF also should end the practice of counting phantom jobs generated by job multipliers. One simple standard might be: If you haven't signed a paycheck, don't claim to have created a "job." All initial TEF development agreements should verify and report the recipient's pre-contract employment "baseline" from which "new jobs" will be calculated. Long-time workers don't suddenly have "new" jobs simply because their plant is bought out by a new parent company (e.g. Alloy Polymers). TEF should prohibit golden parachutes that allow recipients to cite conditions beyond state control to nullify contractual obligations (e.g. Sematech receiving other government grants or Vought renewing its U.S. Navy lease).

Noncompliance with TEF agreements is widespread. Increase clawback penalties and strictly enforce these fines and the termination clauses that should be used to recoup state funds and redistribute them to employers who honor contractual commitments. Prohibit "informal" amendments of TEF contracts, as well as retroactive amendments that apply to periods before an amendment is signed. Increase monetary penalties for amendments that reduce or postpone job targets (today's jobs are worth much more than promises of jobs five years hence).

The taxpayers bankrolling TEF have a right to transparency. Those opposed to good-government transparency need not apply for public funds. Impose statutory transparency on TEF contracts, amendments, terminations and compliance reports, mandating that they be posted on the Internet within five business days (with standard exceptions for such things as Social Security numbers). Promptly post on the Internet surplus job credits earned, clawback penalties sought and paid, and repayments of any grant funds and interest. Require independent audits of annual compliance reports. Require that annual compliance reports disclose other grants or subsidies that the recipient has received from federal, state or local government entities.

TEF grants are a privilege—not a right. The legislature should consider the merits of setting prevailing wage, minority hiring or environmental standards for TEF recipients. The award and retention of TEF grants could be made contingent upon recipients receiving certificates of good standing that verify that they are in substantial compliance with state tax and environmental laws and regulations.

IX. Notes

[1] "Recession Pounds Perry's Job Fund," Texans for Public Justice, January 27, 2010. http://info.tpj.org/watchyourassets/enterprise2/index
[2] Based on improved compliance reports in 2009, TPJ upgraded Comerica and Home Depot, from "troubled" classifications in 2008 to "performing" in 2009. Meanwhile, five projects that TPJ deemed "troubled" in 2008 shifted to "non-performing," two were terminated and one was amended.
[3] It amended the Texas Energy Center's contract in 2005.
[4] The Governor's Office has released two separate HelioVolt amendments. The 2009 compliance documents filed by Rockwell Collins and Martifer suggest that each of recipients also negotiated two amendments apiece and the Associated Press reported in early 2010 that Vought Aircraft landed a second amendment. At press time, the Governor's Office still had not released second amendments for these three contracts under the Public Information Act.
[5] During the 2003 dot.com bomb, Texas' unemployment rate peaked at 6.8 percent.
[6] "For State, Slump Is Worst in Decades," *Austin American-Statesman*, March 18, 2010.
[7] See http://www.governor.state.tx.us/files/ecodev/TEF_Listing.pdf
[8] "Hutchison Jabs Perry Over Texas Enterprise Fund," Associated Press, January 28, 2010.
[9] These jobs are associated with 51 TEF projects that largely overlap the 50 TEF projects highlighted in this report. By way of exception, TPJ never obtained 2009 compliance reports for four of the 50 TEF projects highlighted in this study (Alloy Polymers, Cabela's, Sematech and Texas Instruments). Conversely, TPJ did obtain 2009 compliance reports for five recent TEF projects otherwise excluded from this report because they did not face 2009 job targets (Caterpillar, Grifols, McLane Advanced Technologies, Medtronic and Zarges). TPJ counted any 2009 jobs that these companies reported.
[10] Alloy Polymers also appears to have sought TEF credit for 32 pre-existing jobs.
[11] The Governor's Office awarded almost $12 million in TEF funds for three projects bereft of job targets. Baylor College of Medicine milked $2 million from TEF for a no-jobs-required proposal to map the genetic structure of a cow. The parties terminated the Baylor deal in October 2009, declaring all its terms met. TEF also awarded $9.8 million to two projects connecting major Texas universities via a fiber-optic network: The Lonestar Education & Research Network (LEARN) and the Texas Internet Grid for Research & Education (TIGRE). TEF treats LEARN and TIGRE as a single grant despite the fact that they signed separate TEF contracts.
[12] Allstate, Cardiovascular Systems, Caterpillar, Facebook, Grifols, Hanger Orthopedic, Kohl's, LegalZoom, McLane Advanced Technologies, MiniMed Distribution (Medtronic) and Zarges Aluminum.
[13] This excludes Alloy Polymers, Cabela's, Sematech and Texas Instruments, for which the Governor's Office provided no 2009 jobs data.
[14] This amounts to a 20-job surplus beyond the 2007 target of 20 jobs—provided that you count the 32 preexisting Amapcet jobs as "new."
[15] "Company Cancels Enterprise Fund Deal," *Austin American-Statesman*, September 2, 2010.
[16] "Countrywide Plans Deep Cuts," *New York Times*, September 8, 2007.
[17] "Perry Blasts Washington Inaction On Rescue Plan," Associated Press, *Austin American-Statesman*, October 1, 2008.
[18] "Gov. Rick Perry's Remarks Regarding Countrywide Financing," Office of the Governor, December 14, 2004.
[19] That is $7.9 million, or $8.5 million with interest.
[20] "$600 Million Countrywide Settlement," *New York Times*, August 3, 2010.
[21] "BofA To Pay $108 Million in FTC Case," *Wall Street Journal*, June 8, 2010.
[22] "HP May Cut as Many Jobs As 25,000," *Latin American Herald Tribune*, July 19, 2005.
[23] "What Are Jobs Worth?" *Austin American-Statesman*, January 24, 2010.
[24] HP's first job target was a total of 180 new jobs by the end of 2007.
[25] Sino shed 77 more workers in 2007.
[26] "Reappraising the Governor," *Texas Observer*, May 29, 2009.
[27] "Murky Land Deals Mark Gov. Rick Pery's Past," *Dallas Morning News*, July 25, 2010. "Rick Pery's Property Buyer in '07 Land Deal Was Influential But 'Invisible,'" *Dallas Morning News*, July 24, 2010.
[28] "If the Horseshoe Fits," *Austin Chronicle*, August 3, 2010.
[29] "Sino Swearingen Lands New Investor," *San Antonio Express-News*, September 25, 2007.
[30] The exception is Motiva, which appeared to comply with the 2009 job targets contained in its original TEF contract.

[31] Cabela's Vice President David Roehr letter to Texas Economic Development Executive Director Jeff Moseley, November 13, 2003.
[32] The state also kicked in $20 million in work on the I-35 interchange near the Buda store. See "Cabela's Sought Big Incentives From State," *Austin American-Statesman*, November 22, 2005.
[33] The contract stipulates that the Cabela's jobs offer an average annual gross compensation of at least $23,000.
[34] "Dalhart's Dairy Boom," *Dairy Today*, June/July 2007.
[35] "Behold the Power of Cheese," *Texas Dairy Review*," January 2006.
[36] "What Are Jobs Worth?" *Austin American-Statesman*, January 24, 2010. "Samsung Tax Refund Bid Wins Council's Support," *Austin American-Statesman*, August 27, 2010.
[37] "Texas-Size Stakes: Austin Lands Samsung's $4 Billion Fab," *Site Selection Magazine*, May 4, 2006.
[38] "Samsung 'Holding Breath,'" *Austin Business Journal*, January 29, 2010. "Booming Demand for Flash Memory Drives Renovation of Austin Complex," *Austin American-Statesman*, February 8, 2010.
[39] Including 275 direct hires and 100 contract workers.
[40] 284 direct hires and 194 contractors.
[41] Several days before Samsung completed its 2008 compliance report a local paper reported a modest layoff of fewer than 20 of Samsung's 1,800 local employees in response to "a severe global downturn in demand for semiconductor products." See "Samsung Reorganizes Austin Subsidiary," *Austin American-Statesman*, January 27, 2009.
[42] "Samsung Austin Semiconductors Plans To Cut 550 Jobs," *Austin American-Statesman*, August 12, 2009.
[43] "Samsung Lays Off Hundreds for Project," KXAN Austin, August 14, 2009 (updated August 15, 2009).
[44] "Samsung Giving $1 Million To Local United Way Today," *Austin American-Statesman*, September 1, 2010.
[45] "Samsung Investing $3.6 B in Austin," *Austin Business Journal*, June 6, 2010.
[46] "Samsung 'Holding Breath,'" *Austin Business Journal*, January 29, 2010.
[47] "Report Details Reworked Jobs Deal," *Austin American-Statesman*, January 28, 2010. Cryer told the *Statesman* that this total adds up to about 3,000 workers.
[48] "Perry Makes South Korea Stop to Visit Samsung," *Austin American-Statesman*, June 23, 2010.
[49] "Samsung Giving $1 Million To Local United Way Today," *Austin American-Statesman*, September 1, 2010.
[50] A similar variant of the agreement is dated November 1, 2003.
[51] The deal also calls for Sematech to spur 4,000 indirect jobs by 2014.
[52] "International Sematech Agrees to Locate Headquarters at University at Albany Nanocollege," Governor Eliot Spitzer press release, May 9, 2007.
[53] The funds can only be used for "capital purspposes." The parties formally approved this deal on May 12, 2010—before the expiration of the seven-year black-out period in Sematech's TEF deal.
[54] January 11, 2010.
[55] The first paragraph of the agreement says that it is between the State of Texas and "Sematech, Inc., doing business as International Sematech, a not-for-profit membership consortium incorporated in the State of Delaware ('ISMT')."
[56] "Is Sematech Slipping Away to New York?" *Austin American-Statesman*, May 23, 2010.
[57] "Chip Alliance Sematech Again Taps IBM For Chief," *Austin American-Statesman*, November 18, 2009.
[58] Sematech May Sell Austin Lab," *Austin American-Statesman*, October 12, 2007. "Sematech To Sell Chip Facility," *Austin American-Statesman*, December 4, 2007.
[59] Sematech May Sell Austin Lab," *Austin American-Statesman*, October 12, 2007.
[60] Including "direct hires, assignees and guest researchers."
[61] In its January 2010 TEF report, TPJ erroneously reported a different figure: 437 jobs instead of 277. The source of that error was a compliance report that said Sematech had 480 Austin employees for 2004-2005. Although this meant that Sematech had 480 employees in the fiscal year beginning in 2004 and ending in 2005, TPJ wrongly took it to mean that Sematech had 480 employees in both of those calendar years. Instead, Sematech reported 640 employees in 2004. This suggests that Sematech had 277 employees in 2008, to yield its reported average of 477 for the years 2004 through 2008.
[62] "Where Are Sematech Jobs?" *Austin American-Statesman*, May 25, 2010.
[63] Superior reported 78 new jobs in 2006 and 65 in 2007.
[64] "Airplane engine firm to hire 114," *Midland Reporter-Telegram*, August 23, 2006.
[65] "Revving up the economy," *Odessa American*, April 23, 2007.
[66] "Who's Funding Workforce Development?" *The Policy Page*, Center For Public Policy Priorities, April 4, 2005. The Texas Workforce Commission administers the Skills Development Fund.

[67] This followed a reported surplus of 63 jobs in 2008.
[68] "Tyson Foods Illegal Immigrant Lawsuit Thrown Out," Associated Press, February 13, 2008.
[69] "Tyson Foods Settles Wage Case With U.S.," *Wall Street Journal*, June 14, 2010.
[70] The Governor's Office has released two separate HelioVolt amendments. The 2009 compliance documents filed by Rockwell Collins and Martifer suggest that each of recipients also negotiated two amendments apiece and the Associated Press reported in early 2010 that Vought Aircraft landed a second amendment. At press time, the Governor's Office still had not released second amendments for these three contracts under the Public Information Act.
[71] The exception is Motiva, which appeared to comply with the 2009 job targets contained in its original TEF contract.
[72] Allied is a subsidiary of Titan Tank & Vessels LLC.
[73] The company said it had invested about three-quarters of the $16.3 million that it had promised to invest in Texas.
[74] Fidelity's 2008 tally includes six employees who worked at company subsidiaries that were not covered by its TEF agreement. The Governor's Office said that it agreed to expand the agreement to cover additional subsidies.
[75] "Fidelity Expansion Is a Go," *Dallas Morning News*, February 8, 2007.
[76] "HelioVolt Corp. Puts Off Growth," *Austin Business Journal*, February 5, 2010.
[77] It reduced these damages from $1,396 per missing job to $1,340. The preamble to the December 2008 amendment suggests this tweak was "due to the timing of the initial disbursement" of TEF funds. According to TEF records, this first $500,000 payment occurred the following month in January 2009.
[78] "HelioVolt's First Solar Materials Plant Prepares To Fire Up in Austin," *Austin American-Statesman*, October 23, 2008.
[79] "Report Details Reworked Jobs Deals," *Austin American-Statesman*, January 28, 2010.
[80] TEF reports that HelioVolt paid $45,560 in penalties, an amount commensurate with just such a shortage. The $45,560 clawback divided by the amended penalty ($1,340 per missing job) equals 34 missing jobs.
[81] Including at least 300 direct hires and no more than 300 jobs through Orion-project subcontractors
[82] This included 495 direct hires and 208 Orion subcontractors.
[83] The compliance report that Martifer filed in January 2010 says that it had just signed a second TEF amendment.
[84] "Shell, Motiva Cut Jobs in St. Charles Parish, Other Plants," *Times-Picayune*, July 17, 2009.
[85] The original deal required 4,000 jobs by the end of 2012; the amended deadline is the end of 2015.
[86] This amendment dropped the pre-agreement baseline from 947 Rockwell employees in Texas to 932 Texas employees.
[87] With the lower jobs baseline adopted a month after Rockwell filed this report, this deficit presumably would drop to a shortage of 113 jobs.
[88] The Center reported that it had a hand in creating the most jobs at EMS Pipelines Services, Inc. (817 jobs), Sunoco Logistics Partners, LP (228) and Schlumberger Technology Corp. (115).
[89] "Beneficiary of State Grant Has Links To Perry," *Houston Chronicle*, August 7, 2005. The contributing stockholders were Robert McNair, William McMinn and Gordon Cain's family (Gordon Cain died in 2002).
[90] "Of Mice and Men," *Texas Tribune*, May 10, 2010.
[91] The agreement also counts jobs at concerns in which Lexicon owns 50 percent or more.
[92] The Texas Workforce Commission credited Texas jobs in these industries to the A&M Institute: Wet Corn Milling; Soybean Processing; Other Oilseed Processing; Ethyl Alcohol Manufacturing; All Other Basic Organic Chemicals; Cellulosic Organic Fiber Manufacturing; Nitrogenous Fertilizer Manufacturing; Phosphatic Fertilizer Manufacturing; Fertilizer (Mixing Only) Manufacturing; Agricultural Chemicals Except Fertilizer; Medicinal and Botanical Manufacturing; Pharmaceutical Preparation Manufacturing; In-Vitro Diagnostic Substance Mfg; Other Biological Product Manufacturing; Electromedical Apparatus Manufacturing; Analytical Laboratory Instruments; Irradiation Apparatus Manufacturing; Surgical and Medical Instrument Mfg; Dental Equipment and Supplies Mfg; Ophthalmic Goods Manufacturing; Dental Laboratories; Testing Laboratories; Research and Development in the Physical, Engineering, and Life Sciences; Medical Laboratories; and Diagnostic Imaging Centers.
[93] Under the original deal Lexicon already would have had to create 1,550 new jobs by then. Lexicon reported in 2009 that it had created no new jobs.
[94] The original agreement requires claimed jobs to have an average annual gross compensation of $60,000—or $15,000 per quarter. The Workforce Commission divides quarterly payroll wages in the selected industries by $15,000. If aggregate compensation exceeds the floor amount, A&M gets extra job brownie points.

[95] Triumph Group, a Pennsylvania-based maker of aircraft parts, purchased Vought from the politically connected Carlyle Group in March 2010. “Triumph To Acquire Vought Aircraft for $984 Million,” *Wall Street Journal*, March 24, 2010. “Vought Eager To Grow as Part of Triumph,” *Dallas Morning News*, August 31, 2010.
[96] “Vought’s Grant Has an Escape Clause,” *Dallas Morning News*, May 15, 2006. “Vaught’s Plans Up In Air,” *Dallas Morning News*, June 13, 2005.
[97] “Three More Enterprise Fund Companies Fall Short on Jobs,” *Austin American-Statesman*, May 21, 2010.
[98] “Washington Mutual Lays Off 255 Employees,” Associated Press, November 2, 2006.
[99] “J.P. Morgan Chase To Cut 2,800 Jobs at WaMu,” *Dallas Morning Ne*ws, February 27, 2009.
[100] “Failed Thrift’s Execs Defend Banks Actions,” *Dallas Morning Ne*ws, April 14, 2010.
[101] In 2006 WaMu claimed a 30-job surplus beyond its target of 1,200 jobs.
[102] WaMu reported that the new facility accounted for 1,855 of these employees.
[103] “Enterprise Fund Companies Allowed to Count Part-Time Jobs,” Associated Press, April 17, 2009.
[104] General Electric has no job-creation targets.
[105] Dr. Kenneth Shine letter to Texans for Public Justice, December 22, 2009.
[106] “Finally Chip-Shape: Plant Built in ’06 To Begin Production,” *Dallas Morning News*, September 30, 2009.
[107] “TI To Cut 191 Jobs,” Associated Press, September 10, 2007.
[108] “Texas Instruments Wins $51 Million Tax Credit for Richardson Plant,” *Dallas Morning News*, January 9, 2010.
[109] “Chip Maker Seeks To Grow On the Cheap,” *Wall Street Journal*, April 27, 2010.