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Critics say Wal-Mart got bargain in Texas

By JAY ROOT
STAR-TELEGRAM STAFF WRITER

BAYTOWN — When Wal-Mart was looking for a spot to build its largest-ever distribution center, the old US Steel property near Baytown offered great transportation links, cheap land and incentives from state officials eager to cut a deal.

What sealed it, key participants said, was a multimillion-dollar tax-break and funding

DEVELOPMENT Opponents say the Permanent School Fund gave the company a sweetheart deal to build a giant distribution center on the Texas coast.

package provided by the Permanent School Fund of Texas, a 150-year-old endowment increasingly used and promoted as an economic-development tool by Gov. Rick Perry and Land Commis-

sioner Jerry Patterson.

Months later, as construction begins, critics are calling the transaction a sweetheart deal and questioning why a fund set up for Texas schools is being used to give the world's largest company what one national watchdog group calls its largest taxpayer subsidy ever.

"Wal-Mart is getting a hell of a good deal," said Judith Hargrove,

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an Austin lawyer who has successfully represented Travis County appraisers in tax disputes. "Why would you cut Wal-Mart in on such a huge tax benefit without making them pay a little bit more for it?"

Under the terms of the transaction, the Permanent School Fund will buy the facility from Wal-Mart and lease it back to the retailer for 30 to 40 years, with the rent payments going to the fund. The fund is tax-exempt, so local cities, counties and school districts cannot collect taxes on the land or the building.



PERRY

As is not the case with most locally approved tax breaks, Wal-Mart is not required to meet investment or job-creation goals.

State officials and other proponents note that Wal-Mart will still pay \$2.3 million a year in local taxes on the company's leasehold and the center's inventory. The site currently generates less than \$3,000 in local property taxes. And officials say the school fund will get millions a year once the lease kicks in.

Without the incentives, they say, Wal-Mart would have taken its investment, its tax base and its 300-plus full-time jobs elsewhere.

"Most of the objections I get about this are, it's ... evil, conspiratorial Wal-Mart," said Patterson, who is both land commissioner and chairman of the School Land Board, which oversees Permanent School Fund real estate deals. Patterson emphasized that local taxing entities will see a huge increase in tax revenues from the site, despite the loss of property taxes. "How can you be upset about that?" he asked.

Through a spokesman, Wal-Mart calls the transaction a win-win deal: The company gets a brand new warehouse in a fast-growing port, and Baytown gets jobs, tax revenue and highly coveted economic development.

Either way, the controversy and the sheer size of the transaction — it's the biggest land deal the fund has done to date — are contributing to increased scrutiny of the project and other possible real estate deals involving the school fund.

Established in 1854 with a \$2 million grant from the Legislature, the fund has grown to \$18.8 billion and in recent years has contributed \$700 million to





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\$800 million a year to public education, including buying textbooks.

Until recently, the fund invested almost exclusively in stocks and bonds. But a legislative change in 2001 turned it into a major real estate speculator, able to tap oil and gas revenues in an escrow account currently valued at \$275 million.

Other deals are in the pipeline, including one with Vought Aircraft Industries, a unit of the Carlyle Group, which is negotiating with fund managers over the future of its Dallas manufacturing facility.

Both deals were brought to fund managers at the land office by members of Perry's economic-development staff. Patterson said that's fine with him. But he said job-creation potential is a bonus, not a requirement, for the fund's transactions.

State Sen. Steve Ogden, R-

Bryan, calls the economic-development policies "pretty fuzzy" and said he worries about the risks involved in the real estate deals. He vows to raise more questions in upcoming hearings.

"I'm concerned about all the wheeling and dealing that's going on over here, so I do want to look at it," Ogden said. "The obvious question is, Do we want to be taking local property-tax revenue from local taxing entities so we can enhance the Permanent School Fund?"

Meanwhile, Texas State Auditor Lawrence Alwin raised questions last week about whether the permanent fund's real estate portfolio has produced adequate returns.

Shrouded in secrecy during negotiations, details of the Wal-Mart deal have come to light in scores of interviews and hundreds of pages of records provided to the *Star-Telegram* under the Texas Public Information Act.

The school fund will buy the 2 million-square-foot facility upon completion for a projected \$80 million, then lease it back to Wal-Mart for at least 30 years.

Wal-Mart's lease payments would be 6 percent of the estimated \$80 million per year for the first five years. That's roughly \$4.8 million a year. Every five years, the payments would increase at a fixed rate of 10.4 per-

cent, meaning that in the sixth year the payment would go up to nearly \$5.3 million.

Those terms raised alarms for John Pouland, a Clinton administration official who once oversaw federal real estate management in the General Services Administration's Fort Worth office.

Pouland, who reviewed the agreement at the *Star-Telegram's* request, said the low rate and the failure to tie increases to the Consumer Price Index, as originally proposed, favor the retailer. Should inflation rise higher than 2 percent a year, the payments will lose ground over time.

"I think Wal-Mart worked over the state of Texas pretty well," Pouland said. "I think Wal-Mart clearly got the better end of the deal, all things considered."



PATTERSON

Land commission officials project that the state will receive some \$180 million in rent over the life of the lease. After that, Wal-Mart must buy back the building for what the state paid or market value, whichever is higher.

"There is no risk for us in this transaction," said Deputy Land Commissioner Bo Tanner. "That is a huge thing for us."

Wal-Mart must pay taxes on inventory, equipment and its leasehold interest, typically the amount of annual rent payments. But the fund's tax-exempt status relieves the company from any tax obligation on the building and land, officials say.

At today's tax rates, the concession on \$80 million in Chambers County is worth nearly \$2 million a year, or about \$55 million over 30 years.

That would give Wal-Mart its largest taxpayer subsidy ever, according to the watchdog group Good Jobs First. The Washington, D.C.-based nonprofit organization, which is highly critical of the incentives, recently released a

report saying Wal-Mart had received at least \$1 billion in taxpayer subsidies in recent decades.

Wal-Mart spokesman Keith Morris said it is impossible to know whether the Baytown subsidy is the largest, but he described the distribution center as





good for both Wal-Mart and Chambers County taxpayers.

"It's not an issue where there is an incentive that's offered and nothing is gained in return," he said.

He said Wal-Mart chose the area, 25 miles east of Houston, for a variety of reasons: the combination of port and rail, the work force and tax subsidies.

Wal-Mart began looking at the Baytown area in early 2003 as an alternative to its import distribution center in California, where expensive land and organized-labor woes have driven up the cost of doing business, officials said.

At the same time, economic-development promoters in Chambers County had begun turning to giant warehouses along the port as a way to supplant smokestack industries that dirty the air.

They are convinced that Wal-Mart would have gone to another southern port had they not come up with the incentives the company wanted.

Wal-Mart "told us they definitely would not come without the permanent school funding," said Mike Shields, director of the Baytown/West Chambers County Economic Development Foundation. "I'm convinced they would have walked."

Land officials say all local taxing entities, including the school superintendent, signed off on re-

moving the property from tax rolls — in identically worded letters whose text was crafted at the land office.

In keeping with the secrecy of the arrangement, the company receiving the concessions was never identified until Wal-Mart made its announcement in February.

Even when the Baytown City Council and Chambers County Commissioners Court authorized spending up to a combined \$450,000 in infrastructure improvements in November, the mayor and county judge did not know the identity of the company or how big the eventual tax breaks would be, those officials said.

Nor was there much danger of the story leaking to the local press: Among those signing a confidentiality agreement was the editor and publisher of the *Baytown Sun*, Wanda Garner Cash, who also sits on the economic-development foundation board, the newspaper disclosed.

The secrecy and the long-term nature of the tax breaks rub Goose Creek school board member Weston Cotten the wrong way. He said he was unaware that the superintendent had signed the letter supporting

the deal.

"I am very unhappy that our state government has decided to take away local control," Cotten said. "It affects my board, my school district. I feel like we should have known. These aren't white-collar [jobs]. They're not even middle-class jobs."

Then-Baytown Mayor Pete Alfaro said the school board members were not brought into negotiations because, unlike the Permanent School Fund, they could not offer tax breaks.

"They weren't in the loop," he said. "The only people they [Wal-Mart representatives] were looking for were people who could give them tax abatements."

Patterson, the land commissioner, said it's not his problem if local taxing authorities don't communicate internally. He said he trusts them to figure out what they're getting into and raise objections at the time.

In the meantime, he vows to keep making real estate deals because they diversify the Permanent School Fund and, he said, promise a better return than the fund is getting today, on average, through stock and bond investments.

"Anyone who opposes this deal doesn't understand it," Patterson said. "We'd like to do more [real estate deals]. And we're going to do more."



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Wal-Mart is building a 2 million-square-foot distribution center at this site in Bay City. Tax incentives were among the reasons the company chose the location.