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State spent \$30M on tuitions under program's loose rules

Lax rules appear to allow abuse in state agencies

By **Brian M. Rosenthal** | March 27, 2015 | Updated: March 31, 2015 11:27am

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AUSTIN - When news broke earlier this year that a Texas Health and Human Services Commission official named Patricia Vojack had gotten the state to pay \$37,000 up front for her tuition to graduate school, nobody was more surprised than Paige Marsala.

Marsala works at the same commission as Vojack and is pursuing the same master's degree in public leadership at the University of Texas. She also had asked the commission to help pay her tuition. Her request had been denied.

At that time last spring, Marsala had served as an agency ombudsman for six years. She was making a \$68,000 salary - less than half that of Vojack, a deputy commissioner. Vojack had been on the job just six months but was a friend and former political aide of the executive commissioner.

The difference in treatment, which a commission spokeswoman declined to explain, is just one example of inconsistencies and a lack of accountability that plagues tuition payment programs for Texas state workers, which have totaled at least \$30 million in taxpayer

money over the past two decades, a Houston Chronicle investigation has found.

The problems, which reach far beyond what previously had been reported, stem from a combination of loose policies and lax enforcement.

Regulations governing tuition benefits include only three rules, and all may have been violated, according to a review of 40,000 payment records and policies at nearly two dozen state agencies.

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The rules require agencies to adopt a policy regarding recipient eligibility and obligations; require payments go toward education programs related to the job duties of the employee; and prohibit agencies from paying the money more than six weeks before classes begin.

Payment before classes

The state agency that spends the most on tuition payments, the Texas Department of Transportation, which has paid out at least \$13 million since 1993, has poured more than half a million dollars into a category of education programs it labels as "non-job related," according to documents obtained in records requests.

The department also issues all its tuition payments before classes begin, the same practice that drew criticism when it came to light in January that the health commission had paid up front for Vojack and Casey Haney, another connected official. That method is controversial because it does not make employees prove they have passed courses before money is spent.

Newly-released documents show the payments for Vojack and Haney were based on the case of another connected commission official, David Kinsey, a

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former aide to then-Lt. Gov. Bob Bullock, whose \$64,000 tuition was paid before his classes ended in 2008. At least two other employees have gotten at least \$50,000 for tuition since 2007.

In addition, some agency policies appear to be incomplete, including the Department of Public Safety's 398-word procedure, which does not mention eligibility, as state law requires.

No surveyed agencies encourage workers to take classes at public universities over more expensive private colleges. Of the 50 institutions used the most, 23 are private or based outside of Texas. The list includes Harvard University in Massachusetts and Northwestern University in Illinois.

And few agencies require recipients to repay tuition monies if they leave the state's payroll after completing classes. In one case, records show, a health commission facilities manager received \$52,000 between 2007 and 2011 to attend the private Our Lady of the Lake University in San Antonio. He retired in 2013, raising questions about how the payment helped the state.

Records also show that on one occasion, a state official unilaterally changed his agency's procedures to try to help himself get a tuition payment. The gambit by then-Office of

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Injured Employee Counsel chief of staff Brian White ultimately cost him his job.

"It's absolutely a recipe for problems," said Craig McDonald of Texans for Public Justice, an Austin-based group. He added "the lack of rules allows nepotism, favoritism and cronyism to breed."

Defending the program

Several officials defended tuition payments, saying they help hundreds of workers become better public servants and are in similar to programs in the private sector.

State agency	Spending	Recipients	Per recipient	Total workers	Policy size	Limit	Up
Transportation	\$10,600,000	844	\$12,595	11,566	1.5 pages	None	Ye
Family and Protective Services	\$566,000	91	\$6,220	12,272	18 pages	\$3,000/semester	Nc
Health and Human Services	\$519,000	34	\$15,265	12,562	3 pages	None	Nc
General Land Office	\$444,000	65	\$6,831	633	Program eliminated	N/A	N/
Environmental Quality	\$362,000	116	\$3,120	2,685	2 pages	None	Nc

"All Texans benefit from an educated state workforce," transportation agency spokeswoman Veronica Beyer said by email.

Beyer rejected the idea her agency may have violated state law. She noted the rules allows for payments in the weeks before classes begin and for spending on education related to "prospective duties" of workers. That spending gives the department "flexibility to cross-train employees and to plan for succession," she said.

The DPS and the health commission also said they followed state law.

Still, some state lawmakers expressed concerns.

"I'm not opposed to tuition payments conceptually," Rep. Travis Clardy said. "But, boy, we need to have good, transparent policies and some more oversight."

Clardy, R-Nacogdoches, has sponsored House Bill 3337, which would ban up-front payments and require agency directors to approve tuition payments and post policies online. Another plan, Senate Bill 1638 from Democratic Sen. Judith Zaffirini of Laredo, would make agencies publicly report payments.

Current state law authorizing tuition payments dates to 1993.

There is no central database of tuition payment information, because the payments are categorized together in the state's accounting system with more traditional employee training and conferences.

An analysis of data about tuition alone showed the transportation department easily topping the list, although spokeswoman Beyer could not explain why. The agency's spending has surged recently, with about \$10.6 million in payments for 844 employees since 2002, around \$12,500 per recipient.

Some 90 percent of spending goes toward job-related degrees, while 7 percent is not job related, and 3 percent is for non-degree programs, according to the agency.

Health and human services agencies accounted for roughly \$4 million of the spending since 1993, not counting two departments that could not separate out tuition payments. One of those, the Department of Assistive and Rehabilitative Services, may have spent almost \$2 million. The central health commission itself has spent \$519,000 on just 34 employees, more per-recipient than any other agency.

Most policies of top-spending agencies ran about two or three pages long, although the Department of Family and Protective and Services provided two sets of procedures totaling 18 pages.

That agency also is one of the few with a payment limit: \$3,000 a semester. The Lottery Commission and Parks & Wildlife Department also have limits.

Uneasiness over tuition payments has led some state agencies to eliminate them. Land Commissioner George P. Bush ended the General Land Office's program on the advice of his transition team, according to spokesman Jim Suydam. Before that, the office had spent about \$450,000 on tuition in the prior decade, by far the most of any office that small.

For the Health and Human Services Commission, the push for change has played out more publicly.

Worked for official

The Chronicle and Texas Tribune revealed the up-front payments for Vojack and Haney, both of whom had worked for Executive Commissioner Kyle Janek when he was a state senator.

Soon after, Haney last month resigned and agreed to pay back the money. Vojack, who kept her job, was going to return half her payment, but recently decided to refund all of it, according to the agency.

Janek has called up-front payments wrong and blamed a policy "poorly worded, in the wrong place in the HR manual."

Newly-released documents, however, show Janek signed forms authorizing payments for Haney and Vojack, although they did not specify the cost or when they would be paid - details the commissioner has said he did not know.

Commission spokeswoman Stephanie Goodman said Janek learned the details in August. She declined to say why he did not act until after they surfaced in the media.

Goodman said the agency is revising its policy to create a committee to review requests, as well as make employees cover half of costs above \$5,000 annually and stay at the agency for a time afterward.

Several health officials did not return messages seeking comment, including Vojack.

Brian White, the former official who tried to change his agency's policy, also declined

comment after a recent class for the program he tried to get the state to cover.

The program, it turns out, is for the same public leadership master's degree Vojack and Marsala are taking. Seven other state employees also among the 23 students in the first class of the program, including workers at the Texas Commission on Environmental Quality and Attorney General's office.

In a brief interview outside class, Marsala said she was surprised to see Vojack in the news. She said her tuition had been denied due to a lack of funds, although she got some limited time off for education leave.

Asked if she felt it was unfair to her, Marsala paused.

"I think the tuition program is a wonderful benefit," she said, "when the money's available and when it's approved."



**Brian M.
Rosenthal**

Austin Bureau
Reporter, Houston Chronicle

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Photo: Gary Coronado, Houston Chronicle

Overall, officials have given unadvertised jobs to 179 people - 15.4 percent of their 1,161 hires between Election Day 2014 and Sept. 1, according to a review of records.

AUSTIN - At first glance, Hector Valle would seem like an odd fit for the state agency that oversees all public land in Texas.

When the 37-year-old applied to join the Texas General Land Office last October, saying he wanted to be the agency's "special counsel" - a job that did not exist - his only work experience was as a Dallas anti-gang prosecutor.

Valle had a special qualification, however: He had gone to law school with George P. Bush, the front-runner in what was then an upcoming election for land commissioner.

Two weeks later, Bush won. Six days after that, Valle was on the payroll, making an annual salary of \$115,000.

Valle, who recently became a volunteer fundraising "bundler" for the presidential campaign of Bush's father, former Florida Gov. Jeb Bush, is among scores of political aides, campaign workers and friends of statewide elected officials who have been brought into Texas government over the past year without facing any public competition for their jobs, a Houston Chronicle examination has found.

Despite a two-decade-old law mandating job openings be advertised to the public, Bush and Gov. Greg Abbott, Attorney General Ken Paxton, Comptroller Glenn Hegar, Agriculture Commissioner Sid Miller and Railroad Commissioners David Porter, Christi Craddick and Ryan Sitton have bent the rules to hire at least 150 people with personal or political connections, state records show.

Hiring without giving the public a chance to apply

One-seventh of the 1,161 hires by top Texas state officials since last November's election were made without any job posting being advertised to the public – a violation of a 1991 law. The biggest offenders: Land Commissioner George P. Bush and Gov. Greg Abbott.

AGENCY	STAFF SIZE	HIRES	POSTED HIRES/UNPOSTED HIRES	PCT. UNPOSTED
General Land Office	638	72	17 55	76.4%
Governor's Office	260	100	31 69	69.0%
Agriculture Department	649	94	85 9	9.6%
Comptroller's Office	2,773	226	209 17	7.5%
Attorney General's Office	4,080	588	562 26	4.4%
Railroad Commission	820	81	78 3	3.7%

NOTES:

1) "Hires" does not include interns and other temporary hires. The General Land Office has hired four interns without postings, the Comptroller's Office has hired two and the Attorney General's Office has hired one.

2) 52 of the Governor's Office hires took place on Jan. 20 – the day that Abbott took office – or Jan. 21.

Source: Houston Chronicle analysis of state hiring records

Houston Chronicle

More than 15 percent of hires

Overall, the officials have given unadvertised jobs to 179 people - 15.4 percent of their 1,161 hires between Election Day 2014 and Sept. 1, according to a review of records

documenting all of the hires and job postings in that time.

The list includes at least 70 people who worked on the campaign or in a previous office of the official who hired them, 15 former aides to former Gov. Rick Perry, a half dozen lobbyists and two children of state lawmakers.

Their salaries average about \$90,000 and total around \$16 million. They range from \$30,000, for Rosemary Graber, an Abbott campaign worker who was hired as a receptionist for Hegar, to \$223,500, for Anne Idsal, the granddaughter of an adviser to former President George H. W. Bush who was hired by his grandson as the land office's general counsel. Idsal since has been promoted to chief clerk.

It is not uncommon for politicians to bring trusted aides with them into public office. The hires by the Texas state officials are different in that they include jobs most would think would be filled by nonpartisan bureaucrats - and because they appear to run afoul of the 1991 law.

Unanimously approved by the Legislature, House Bill 2556 required "any agency, board, bureau, commission, committee, council, court, department, institution, or office in the executive or judicial branch of state government that has an employment opening for which persons from outside the agency will be considered shall list the opening with the Texas Workforce Commission."

Despite that, the statute does not appear

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to have ever been enforced. Officials at the Workforce Commission, State Auditor's Office, Attorney General's Office and Department of Public Safety, as well as the Public Integrity Unit at the Travis County District Attorney's Office, said they did not remember ever enforcing the law.



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Workforce Commission spokeswoman

Lisa Givens said she could not say anything else about job postings, citing another law that she said prevents the agency from releasing any information about the postings on its public website. The Chronicle obtained records from the agencies and confirmed the findings with spokespeople.

The records show that Bush has relied on unadvertised jobs the most, making 76.4 percent of his hires without a posting, 55 out of 72, including 14 in July, nine months after the election. Sixty-nine of Abbott's 100 hires so far were not posted, but most were in his first week, when he faced an usually high turnover and had to move quickly because the legislative session already was underway. The others varied from 3.7 percent, by the Railroad Commission, to 9.6 percent, by the Agriculture Department. Lt. Gov. Dan Patrick's office is primarily part of the legislative branch, and thus likely exempt from the law, experts said.

Bush's office did not return messages seeking comment. An Abbott spokesman said the governor "has a Constitutional responsibility to govern on his first day in office and as such must have essential personnel in place." Other officials defended their hires.

"Each employee selected was highly qualified for his or her role," said Lauren Willis, a Hegar spokeswoman, adding "this circumstance is a rare exception to the rigorous hiring process our agency typically follows."

For some lawmakers, however, the quiet hires raised questions about whether officials were harming taxpayers by rewarding cronies.

"These are very important jobs, and not all political jobs," said state Rep. Armando Walle, D-Houston, vice chair of the House Government Transparency & Operation Committee. "You get elected to whatever position, you want to hire people who are loyal to you. I get that. But the law is the law for a reason, and we cannot lose the people's trust."

After hearing the numbers, Walle said he planned to ask his colleagues in the Legislature to consider changing the law to crack down on the practice.

GLO: Bush 'reboot' of land office has campaign, family ties

State Sen. Judith Zaffirini, D-Laredo, said she was especially concerned that few of those who got jobs without competition were veterans, who are supposed to get priority in state hiring. She said she also wanted the Legislature to look at strengthening the law.

Several Republican lawmakers declined comment, including the chair of Walle's committee, Gary Elkins of Houston.

Few official complaints

Lawmakers, who exempted themselves from the original law, have amended it once. In 1999, they added a provision allowing agencies to make hires without postings when undergoing a reorganization mandated by the Legislature. Otherwise, they have allowed the requirement to remain on the books as Chapter 656 of Title 6B of the Texas Government Code.

The law has occasionally received media attention over the years, but there has never been a comprehensive analysis of how often officials have skirted the requirement.

In some of the past cases, agencies that have been criticized for violating the law have pointed to language in the code allowing certain officials to make certain appointments. But there are only a few allowed appointments, and besides, the code does not say they can be hired without a job posting.

A half dozen government watchdogs said they have not filed any complaints about violations of the law. Some questioned whether it would be worth the trouble, saying that

posting a job opening would not stop an official from hiring someone with connections.

"There are a million things wrong with the world, and we can't complain about all of them," said Craig McDonald of Austin-based Texans for Public Justice.

The total of 179 people in the Chronicle analysis does not include those with connections who were hired after a job posting, but it has happened. In one example noted by the Austin American-Statesman, former Perry spokesman Rich Parsons won a \$115,000-per-year job at the Railroad Commission that was publicly posted for just one day.

Employment lawyers said postings can make a difference, though. If a job is posted, said Susan Motley, president of the Texas Employment Lawyers Association, applicants who do not get the job can file a public records request for the application of the person who was chosen and, potentially, sue for discrimination.

"Of course, if a job isn't posted, then someone would never know that the job existed and would not know to apply or request records," Motley said.

Seth Hutchinson, organizing coordinator for the Texas State Employees Union, said job postings are important.

"Laws to prevent favoritism and nepotism in the hiring of state employees should always be followed to make sure that Texans are getting the best-qualified and most capable individuals in public service," Hutchinson said.

It is impossible to tell if the state officials could have gotten more qualified employees by opening up the application process. Some of those who have been hired for unadvertised jobs had years of experience in government, while others did not.

Bush, in particular, has drawn criticism from his predecessor, Jerry Patterson, for firing longtime agency workers and replacing them with loyalists. Idsal graduated from Baylor Law School in 2010, and the commissioner's chief of staff, J.R. Hernandez, the son of an adviser to former President George W. Bush, got his undergraduate degree from Baylor in 2008.

Miller has given his unposted hires the highest salaries, with an average of about \$150,000, largely due to his creation of four new "appointed" assistant agriculture commissioner positions, each paying \$180,000 per year. The commissioner filled those jobs with two former colleagues from the state House, a campaign aide and the wife of a campaign consultant.

Bush also hired the wife of a campaign strategist, for a \$48,000-a-year job. Abbott hired the brother-in-law of his campaign finance director, the sister of an aide to a lawmaker and a son of Republican state Rep. John Zerwas. And Hegar hired a son of GOP state Sen. Brian Birdwell, who had also worked on Hegar's campaign.

'Age-old tradition'

In all, 42 of the 179 unposted hires had worked on the campaign of the office-holder who hired them; 28 had worked for the official in another capacity; 67 had other political connections and 13 had personal or family ties.

National government ethics expert Bob Stern said those with personal connections were the most concerning because they likely had the least qualifications for their jobs.

Stern, a onetime general counsel of California's ethics agency, said he was disappointed to hear about the situation in Texas but not surprised because politicians throughout history have rewarded those who helped them get power.

"It's an age-old tradition," he said.



**Brian M.
Rosenthal**

Austin Bureau
Reporter, Houston Chronicle



Photo: Edward A. Ornelas, Staff

Former Gov. Rick Perry doled out tens of thousands of dollars in bonuses for top aides in his final weeks in office.

AUSTIN - For years, as former Gov. Rick Perry cultivated a conservative reputation and prepared to run for president, he avoided giving his staff large bonuses.

Then he came to the end of his tenure.

The Republican doled out tens of thousands of dollars in bonuses for top aides in his last weeks in office, including \$137,205 on a single day the month before leaving - more than he gave in the previous four years combined, and more than almost any other outgoing American governor gave in 2014, records show. The aides all left with Perry, and soon after, one joined a political group promoting his 2016 bid.

Perry's largesse was no anomaly. Texas officials increasingly are taking advantage of loose rules to hand out big bonuses just before leaving office, or to well-paid aides who themselves are on the way out, even though the money is supposed to be used in part to

retain staff, a Houston Chronicle examination has found.

State officials have spent nearly \$50 million over the past decade on bonuses for departing employees and often have not justified the gifts as required by law, the review found.

Perry and other officials defended the spending, saying it motivated employees and actually saved money because it was in one-time rewards, instead of permanent pay raises.

But state Rep. Chris Turner, a Democratic member of the General Investigating & Ethics Committee, promised to review the bonuses and said they raise "tremendous questions about whether taxpayer money is serving taxpayers."

The issues have grown as annual spending on bonuses by Texas state agencies has tripled over the past decade to \$65.4 million last year, according to an analysis of the more than 193,000 payments over that period.

Overall, the state spent \$355 million on bonuses between September 2005 and September 2015, including \$259 million on so-called "one-time merit payments" that are subject to almost no rules and are not audited.

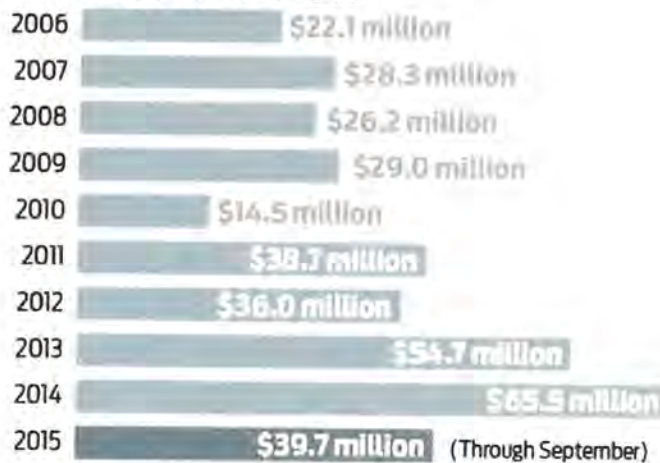
Merit payments

Unlike retention bonuses, which are capped at \$5,000 and must be repaid if a recipient leaves within a year, or investment bonuses, which are audited and tied to performance benchmarks, one-time merit payments can be given in any amount as long as the agency

State bonuses

State officials have spent \$355 million in taxpayer dollars on bonuses over the past decade, including tens of millions for staffers who left state government shortly afterward, according to an analysis of personnel records.

ALL BONUSES BY YEAR



Source: Texas Comptroller of Public Accounts

Houston Chronicle

stays within its budget. The only rules: Officials must keep a justification for each bonus, attempt to spread them out by job type and refrain from giving them to staff who were hired or received another merit payment in the previous six months.

But while some agencies complied with requests for justifications, the Governor's Office, General Land Office, Railroad Commission, Department of Public Safety, Department of Savings and Mortgage Lending and others could not provide any explanation for some payments.

An analysis also indicated the State Auditor's Office and the Department of Transportation have spent tens of thousands of dollars on merit payments given less than six months after a previous merit payments. The Department of Licensing and Regulations and the Employees Retirement System have spent hundreds of thousands on merit payments given less than six months after employees had received either retention or investment bonuses, the analysis showed.

The analysis also identified roughly \$30 million in largely unregulated one-time merit bonuses given to employees who left less than a year afterward, more than three-fifths of the nearly \$50 million in bonuses for departing staffers over that time.

'One strategy'

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The Chronicle focused on bonuses for departing employees after agencies repeatedly said the purpose of their bonuses was to retain staff.

"Retaining employees is an ongoing issue," said Terry Clawson of the Texas Commission on Environmental Quality, for example. "Merit pay, including one-time merits, is one strategy to retain employees."

That agency, however, has given \$1.64 million in bonuses over the past decade for employees who left less than a year later.

Clawson responded to that by saying many other bonus recipients have stayed and that the agency cannot predict when every employee is going to leave.

In all, 66 state agencies have given one-time rewards of at least \$5,000 to employees who left soon afterward, according to the analysis, which combined two databases from the Comptroller's Office.

Perry's last-minute bonuses stood out relative to his past. In his first 12 years as governor, he gave just one bonus of more than \$3,000.

He gave 16 in December 2014, his last month in office, including \$12,700 for his budget director, Kate McGrath, who had gotten a \$7,000 one-time gift nine months earlier; \$8,900 for his legislative director, Ken Armbrister, who made a \$180,000 annual salary; and \$13,500 for his chief of staff, Kathy Walt, who had a \$270,000 salary and later joined the political group promoting his campaign, RickPAC.

A survey of the dozen other states that changed governors this year showed that only former Gov. Jan Brewer of Arizona gave more bonuses in her last year, although Illinois and Arkansas denied information requests.

Walt, who said there was "absolutely no connection" between her bonus and later work as RickPAC's volunteer treasurer, said Perry used rewards to entice employees to stay until the end of his term, instead of leaving early for new jobs.

"Gov. Perry has an unparalleled record of success in job creation, reducing state spending

and cutting taxes," Walt said. "Every agency head has the discretion to award raises, promotions and bonuses within their budgets, and I think it's important for your readers to know that when Gov. Perry left office he left the office in good fiscal health with millions of tax dollars remaining in the agency's accounts."

Former Texas Agriculture Commissioner Todd Staples responded similarly when asked about \$57,000 he gave the Friday before he left in January.

"The team managed to come in under budget, return taxpayer dollars and fulfill their mission, and any compensation and bonuses paid were more than earned," Staples said.

Transportation agency

Still, the bonuses from Perry and Staples paled in comparison to the amount spent on departing staff at agencies such as the Transportation Department.

In 2013, former Executive Director Phil Wilson's last year in office, that agency spent \$2 million on bonuses for departing employees, a significant increase from the \$93,000 the year before.

Agency spokesman Mark Cross said the increase "had nothing to do with the personnel in charge." Instead, he said, it was due to an agency decision that year to use bonuses in lieu of pay raises.

Records, however, show the agency spent more on pay raises in 2013 than in 2012.

Over the past decade, the agency that has spent the most on bonuses for departing staffers has been the Department of Criminal Justice, at \$8.7 million, but most of those were for more regulated retention bonuses. Those went to officers at understaffed prisons, a spokesman said.

Former Teachers Retirement System head Steve LeBlanc got the overall highest bonus for a departing staffer, a \$267,000 investment bonus on top of his \$360,000 salary in February 2012, before leaving that June after four years at the agency.

The highest "one-time merit payment" went to Stephen Goodson, the former chief auditor of the Department of Public Safety, who got \$54,000 two days after he resigned his \$162,000-a-year job in September 2014. The agency could not provide any justification for the move; minutes from a Public Safety Commission meeting say it was awarded "as recognition of his contributions to DPS." A spokesman declined comment.

Other large bonuses were awarded this year by the Employees Retirement System of Texas, when departing chief Ann Bishop gave her second-in-command a \$36,600 one-time merit payment seven months before they both left for the private sector. Bishop also gave herself a \$109,000 investment bonus.

But the best illustration of the trend may be former Land Commissioner Jerry Patterson, a Republican who drew attention this fall for one-time merit bonuses but has escaped scrutiny for their timing.

'Worth a lot'

Patterson, who did not seek re-election last year so he could run for lieutenant governor, handed out \$352,000 in bonuses in June 2014, the month after he lost the primary runoff to now-Lt. Gov. Dan Patrick. Eighteen highly paid employees got at least \$15,000 extra, including six top aides with ties to the commissioner's campaigns who each received \$20,000 and all left shortly after him.

Then, over his remaining half year in office, Patterson gave another \$675,000, including \$30,000 to a top aide who had received \$15,000 exactly six months earlier. That official, an assistant general counsel with a \$153,000 salary, was gone within weeks.

Patterson said that the official "got a lot because he was worth a lot" and was wanted by other employers.

In general, he said all his bonuses were approved by a team to reward accomplishments.

The former land commissioner acknowledged giving more bonuses in his last year in office proudly, saying it was a banner year, with the agency leasing and selling resources

to bring in record revenue for public schools.

"The best, most profitable, highest morale, lowest turnover and most motivated agency in Texas government," Patterson said. "Bonuses? You damn right."

Mark Collette and Matt Dempsey contributed to this report.



**Brian M.
Rosenthal**

Austin Bureau
Reporter, Houston Chronicle

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