

Robin Hood in Texas:

A look at recapture's impact on students, taxpayers, and the state budget.

February 2022



Texas has historically relied on local property taxes to fund public education. This system has fortified the link between the public schools responsible for educating students in a community and the owners of homes and businesses in that community. However, in a state as large as Texas, sizable disparities exist among the amount of property wealth in each district. The location of a major industrial facility in a small community, for example, can create significant property wealth per student.

Through a series of lawsuits that began in the late 1980s, all named for Edgewood ISD in San Antonio, the Texas Supreme Court ruled that the disparities in taxable values used to fund public education was unconstitutional. The Court said the state must reform and equalize the system in order to provide for “a general diffusion of knowledge,” that the state has a duty “to establish and make suitable provision for the support and maintenance of an efficient system of free schools,” and that school districts must have equal access to “similar revenues per pupil at similar levels of tax effort.” After numerous attempts to address the Court’s ruling, the Legislature approved the process of recapture, requiring the state to remove local property tax dollars from districts with the highest levels of property wealth per student in an effort to provide more equal per-student funding across the state. The Texas Supreme Court deemed this system constitutional in 1995. It quickly became better known as Robin Hood — the legendary outlaw and archer in English folklore who was known to rob from the rich and give to the poor.

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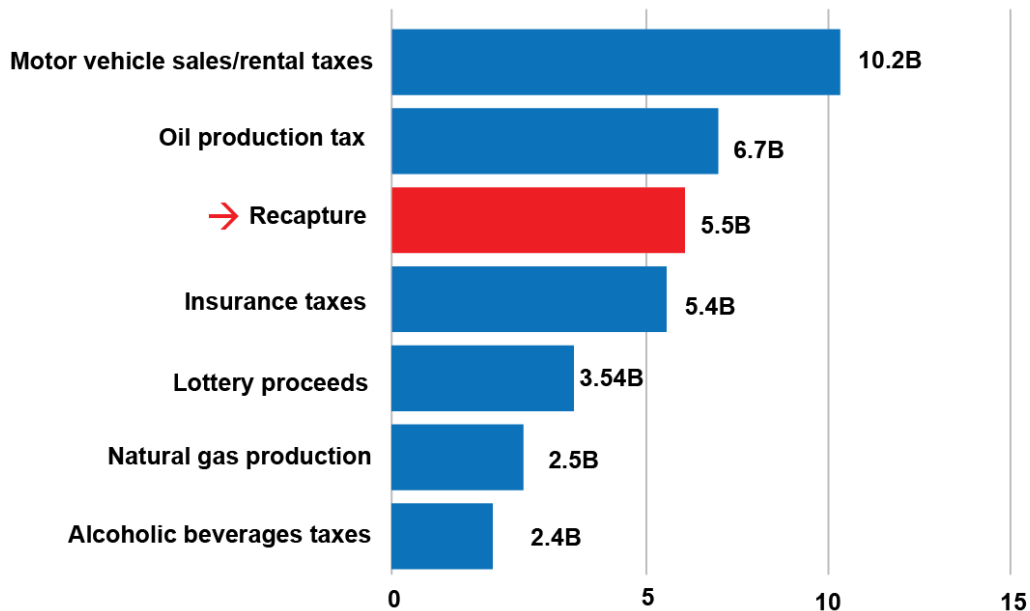
When recapture began in 1994, the state removed \$127 million from 34 school districts in order to equalize funding for public education. Over time, however, the state has come to rely more and more on local property taxes in the funding of public education. This reliance on local property taxes — hand in hand with significant growth in property values statewide — has caused recapture to expand to more school districts and more taxpayers. As recapture has grown, its utility has quietly shifted; today, recapture is one of the state’s largest revenue sources, and the billions of dollars the state collects in recapture payments are used to balance the state budget.

If you live in a school district that loses money to recapture, as about 160 school districts do today, then you are not only paying local school property taxes for local schools; you are also paying that considerable tax bill to help balance the state budget and fund programs that go well beyond public education. Without reform, this expansion of recapture is likely to continue — with significant ramifications for communities that are losing millions of dollars each year in local taxes that are supposed to support and help operate the schools in their communities.



How Recapture Works

Major Sources of Revenue for Texas, 2020-21 Biennium



Sources: Comptroller of Public Accounts Certification Revenue Estimate, Fall 2021; Texas Education Agency, Jan. 10, 2022
The state's largest source of revenue is the sales tax, which produced \$63.1 billion in 2020-21 revenue.

The state's school finance formulas use student enrollment and local tax effort to determine the total amount of funding to which a school district is entitled. If a district's tax effort does not provide enough revenue to meet that entitlement, the state fills in the rest. If a district's tax base is sufficient to bring in an amount of revenue in excess of the entitlement, then the district must pay the state this "excess" revenue. Thus, recapture is formally known as Local Revenue in Excess of Entitlement.

Districts that must pay recapture purchase "attendance credits" from the state. In other words, these districts are paying for the per-student entitlement of a certain number of students who attend school in other districts with less property wealth. When recapture districts cover the costs of those students, the state is relieved of that obligation. Thus, each student who a recapture district pays to educate generates a savings for the state, allowing dollars that would otherwise go toward education to be used elsewhere in the state budget.



The state sets a cap on how high districts can set their tax rates. In 2006, the Texas Supreme Court found that school districts across Texas had so little discretion over their tax rate that Texas effectively had a statewide property tax — something that the Texas Constitution expressly prohibits. As a result, the Legislature reduced tax rates and then gave voters the authority to approve a higher tax rate (up to a different limitation established by the state). . As part of this process, the Legislature enacted laws saying certain voter-approved portions of the tax rate would not be subject to recapture. Today, up to 8 cents of a district's maintenance & operations tax rate can be free from recapture. In addition, taxes collected from the interest & sinking tax rate, which are taxes collected following the approval from voters for the district to sell bonds, are not subject to recapture.

It would be reasonable to assume that a school district could reduce the amount of money it must pay the state in recapture by simply reducing its tax rate. However, it's not that simple. A district's tax rate helps determine its state funding entitlement, so if a recapture-paying district reduced its tax rate, its state entitlement would also decrease and the district may well still have revenue in excess of that entitlement. A school district's recapture payment is more likely to decrease if it experiences a surge in enrollment or if local property values decline.



The Districts Paying Recapture

Of the 1,022 traditional public school districts in Texas, roughly 160 of them paid recapture to the state during the 2021 fiscal year. These districts educate about 1.2 million students and can be found in rural, urban, and suburban communities. While these districts are often referred to as wealthy, it is important to recognize the difference between property wealth and personal wealth.

More than half of the students educated in districts that pay recapture are classified as economically disadvantaged. For example, taxpayers in Austin ISD paid the state more than \$700 million in recapture in 2021 — the most of any Texas district. Yet 51.9 percent of the Austin ISD student population has been deemed economically disadvantaged.

Districts Paying the Most in Recapture,
2020-21 School Year

	School District	Recapture
1	Austin ISD	\$710,562,159
2	Houston ISD	\$197,809,821
3	Plano ISD	\$191,901,273
4	Midland ISD	\$154,436,561
5	Highland Park ISD	\$104,751,098
6	Eanes ISD	\$101,813,483
7	Pecos-Barstow-Toyah ISD	\$99,468,683
8	Wink-Loving ISD	\$87,060,824
9	Dallas ISD	\$85,035,728
10	Spring Branch ISD	\$61,264,149

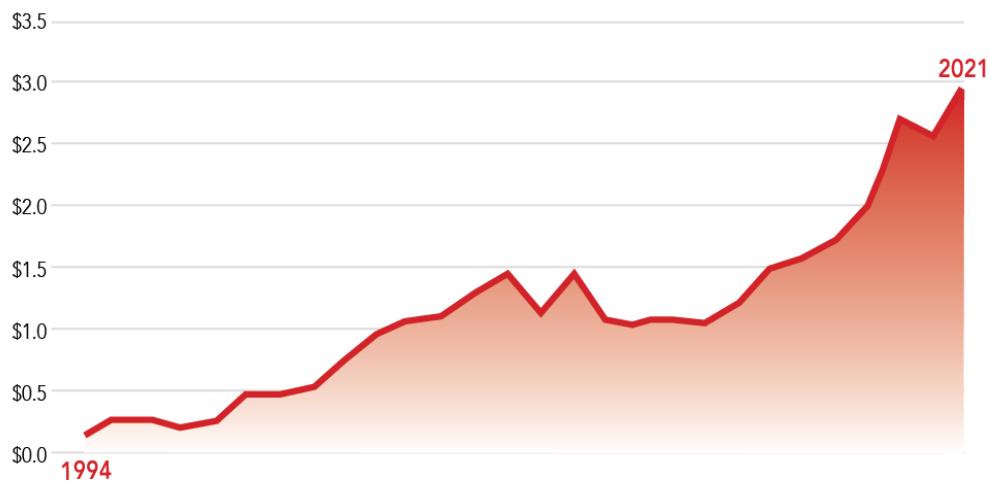
Source: TEA Summary of Finance Near Final data for the 2020-2021 school year, as of January 21, 2022

Other large urban districts with high numbers of students from low-income families, such as Houston ISD and Dallas ISD, also make sizable recapture payments to the state. Meanwhile, a rural community may have significant property wealth because there is oil in the ground, but it may serve a high percentage of economically disadvantaged students. The same can be said for school districts along the Texas coast, where the value of property is especially high, but many students do not come from the families who own that property. For example, taxpayers in Galveston ISD paid \$21 million in recapture last year, even though more than three-quarters of the district's students are economically disadvantaged.

Still, there are many more districts that do not pay into recapture than those that pay, which makes it difficult for serious recapture reform to gain traction in a political body such as the Texas Legislature.



Total Recapture Paid Statewide, 1994-2021.



Source: Texas Education Agency financial data; note: 2021 figure is based on near-final data as of January 21, 2022.

How Recapture Has Grown

The expansion of recapture — in total dollars paid and in school districts paying — has been considerable since the Legislature approved the concept nearly 30 years ago. While legislative changes in school finance laws and periodic drops in property values have caused some temporary decreases in total recapture, the long-term pattern has been steady, sizable growth. In fact, recapture has become one of the state's largest sources of revenue. In the 2020-21 biennium, the state collected more in recapture payments from school districts than it collected in proceeds from the Texas Lottery, natural gas production taxes, alcoholic beverage taxes, and hotel occupancy taxes, among others.

To some degree, the increase in recapture over time is unsurprising. When property values rise, recapture tends to rise as well, and property values in Texas have certainly increased over the past three decades. However, the rise in recapture has also been fueled by the state's reliance on local tax dollars to pay for education.

State revenue and local property taxes combine to provide most of the revenue that goes into public education in Texas. For most of the past decade, the state's percentage of dollars going into public education has waned. State funding stagnated, but the costs of educating a growing student population did not. As a result, legislators relied on local school districts to use property taxes to pick up more of the cost. Property values increased and so the state experienced a "savings" that allowed it to spend less state revenue on public education. When local school districts are collecting more in property taxes, recapture payments increase.



The Impact of 2019's House Bill 3

Growing public concern over the state's shrinking share of education costs contributed to a major focus on public school finance when the 86th Texas Legislature met in 2019. Legislators and other state leaders embraced the opportunity to make investments in public education while also providing property-tax relief across the state.

The Legislature made two significant investments that slowed recapture's growth. First, the Legislature made an investment of \$5.1 billion over two years to compress local school property tax rates, meaning the state required school districts to lower their rates. By lowering local property tax rates and replacing some local property tax revenue with state dollars, this provision helped to reduce the total amount of recapture that school districts owed. Secondly, the Legislature invested \$6.4 billion in new state funding for public education. This infusion of state revenue helped to restore some of the state-local balance in Texas public education funding, and when the state is less dependent on property taxes, recapture generally decreases.

House Bill 3 was certainly meaningful. Absent House Bill 3 or similar measures, statewide recapture was on pace to reach \$6 billion within five years. Still, total recapture paid statewide has continued to grow, and many school districts are yet to experience true recapture relief.

During regular legislative sessions in the spring of odd-numbered years, the Legislature approves a budget to determine state spending over the next two years. The budget takes effect in September — a few months after the regular session ends. It's important to remember that these budgets are based on estimates of how much money will come into the state over the next biennium. Then, in the following regular session, legislators routinely adjust the budget with a few months left in the budget cycle. The vehicle for these adjustments is known as the Supplemental Appropriations Bill.

When legislators met in spring 2021, they found that property values across the state had grown much more than what was projected two years earlier. This growth in property values caused school districts to send an additional \$1.4 billion to the state in recapture payments. However, the state did not allocate this overpayment to schools, and it certainly did not return the money to taxpayers. Instead, it was counted as a savings to the state — an on-paper influx of revenue that helped legislators balance their budget. In fact, the growth of property values and the higher-than expected collection of state revenues had been so significant since legislators approved the much-celebrated \$11.6 billion investment in school finance reform that, two years later, legislators trimmed that investment by \$5.5 billion overall. The \$1.4 billion in higher-than-projected recapture payments was part of that \$5.5 billion savings to the state. This reduction in the state's investment in school finance reform came with far less fanfare than the passage of House Bill 3.



Possible Solutions

One of the most effective ways to reduce the state's reliance on recapture payments going forward would be to make additional and meaningful investments of state revenue in public education — investments that benefit all students, such as an increase in the Basic Allotment, which is the core component of funding distributed to school districts. The future success of this state will depend in large part on policymakers' willingness to make meaningful investments in public education. The state's commitment to compressing tax rates indefinitely will make such investments more difficult to make and sustain, though, because the cost of those compressions will continue to grow as long as property values keep rising.

However, there are more targeted steps that legislators can take to control the growth of recapture, to support students and teachers, and to increase transparency in the use of tax dollars.



First, the Legislature should reintroduce a cost-of-education adjustment to the formulas that determine a school district's entitlement. The formulas that determine entitlement used to make adjustments for the fact that it is more expensive to conduct business in certain parts of the state than others. The House Bill 3 legislation enacted in 2019 removed this adjustment from the formulas, which has caused those formulas to underestimate the true costs of serving students in certain parts of the state.



Secondly, the dollars that the state collects through recapture should go to schools instead of other areas of the state budget. In other words, if total recapture collections exceed the state's estimate for the next two years, those dollars should be directed straight back to public education for the benefit of all students. In other words, if taxpayers are paying more than expected in school taxes, it should actually be the schools that benefit.



Finally, property-tax bills should clearly state how much of the money a property owner pays in local school taxes will be taken away by the state through recapture. This idea, born out of Plano ISD, is known as Taxparency because it increases the amount of information a taxpayer has about how his or her money is spent. Numerous legislators in the Texas House and Senate have filed bills to enact Transparency in previous legislative sessions, but the Legislature has not voted those bills into law. This pro-taxpayer idea deserves real consideration.





Conclusion

Recapture drains needed resources from public schools and puts a major burden on taxpayers across the state.

While it is a laudable goal to ensure that the quality of a school is not determined by the amount of property wealth surrounding it, it's important to recognize and address the growing impact of the state's current system for addressing such inequities. A mechanism that produces almost \$3 billion in revenue for the state while only drawing that revenue from a fraction of the state's property owners is not easily changed, but without significant reform, taxpayers will continue to pay more and public schools will continue to lose more. **Now is the time for stakeholders in recapture-paying communities to put this once-salient issue back on the frontburner, work collaboratively toward solutions, and engage with policymakers about ways to reform the system in ways that will benefit students and taxpayers alike.**

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