



# SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

*School Land Board*  
*Veterans' Land Board*

**2018–2019**  
**86TH LEGISLATURE**

# SUNSET ADVISORY COMMISSION

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**SCHOOL LAND BOARD**  
**VETERANS' LAND BOARD**

**SUNSET STAFF REPORT WITH FINAL RESULTS**  
**2018-2019**  
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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION:** The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

**SECOND VERSION:** The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

**THIRD VERSION:** **The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.**

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# FINAL RESULTS





# FINAL RESULTS

## SCHOOL LAND BOARD

### *Senate Bill 608*

#### Summary

Established by the Legislature in 1939, the School Land Board (SLB) oversees the management, sale, and leasing of over 13 million acres of Permanent School Fund (PSF) land, which generates revenue the board uses to purchase additional real estate and make investments that ultimately help fund public education. The board shares management of the PSF with the State Board of Education (SBOE), but SLB's investment authority has expanded significantly since 2001. In fiscal year 2017, gross revenue from PSF land totaled \$1.9 billion and investment income totaled \$943 million.

Although the Sunset review found no significant problems within the investment program, the Sunset Commission determined SLB needs to implement additional best practices to strengthen transparency and oversight of its investments and to greatly improve coordination with SBOE. Senate Bill 608 requires more detailed reporting of investment fees and includes several provisions to enhance coordination with SBOE, including requiring an annual joint, public meeting of SLB and SBOE regarding PSF investments. Along with these improvements, the bill expands SLB's membership from three to five members, with input from SBOE on the nominees, to allow the board to operate more effectively, requires additional training for board members, and continues SLB for 12 years. Other commission recommendations require SLB to align its investment policies with those of SBOE and to improve its contract monitoring process.

The following material summarizes results of the Sunset review of SLB, including management actions directed to the agency that do not require legislative action.

#### **ISSUE 1** — *Investment Transparency and Oversight*

**Recommendation 1.1, Adopted** — Direct SLB to adopt rules to guide its investment policy and strategies and to align its investment policy and strategies with those that apply to SBOE. (Management action – nonstatutory)

**Recommendation 1.2, Adopted** — Direct SLB to adopt rules for the size, membership, and responsibilities of the investment advisory committee, including a requirement that a majority of the committee members have expertise in the management of a financial institution or other business in which investment decisions are made. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct SLB to publicly report more detailed investment information in the PSF Comprehensive Annual Financial Report and to provide SBOE a quarterly report that includes returns for the investment benchmark and investments themselves. (Management action – nonstatutory)

**Recommendation 1.4, Adopted** — Direct SLB to document the division of responsibilities for its investment management staff. (Management action – nonstatutory)

## ISSUE 2 — *Continue and Governance*

**Recommendation 2.1, Adopted** — Continue the School Land Board for 12 years.

**Recommendation 2.2, Modified** — Expand the board from three to five members. Remove the attorney general's authority to appoint a board member and instead require the governor to appoint four members to the board to serve with the land commissioner. Two of the four appointees must be selected from lists of six nominees provided by the SBOE and at least one of the appointees must be from a county with a population under 200,000.

**Recommendation 2.3, Modified** — Apply the standard across-the-board requirement related to board member training, including a requirement for each board member to attest to both receiving and reviewing the training manual annually. Require SLB board members to receive an in-depth training regarding SLB's investment programs and strategies, as well as a comprehensive overview of the PSF.

**Recommendation 2.4, Adopted** — Apply the standard across-the-board requirement related to separation of duties.

**Recommendation 2.5, Adopted** — Apply the standard across-the-board requirement related to public testimony.

**Recommendation 2.6, Adopted** — Apply the standard across-the-board requirement related to complaints.

**Recommendation 2.7, Modified** — Eliminate the duplicative economic impact of PSF investments reporting requirement, and continue SLB's four other required reports. Require SLB to include in its existing economic impact report to the Legislature the amounts of all fees or other compensation SLB pays to investment managers, consultants, or advisors.

**Recommendation 2.8, Adopted** — Direct SLB to review and approve large contracts and to receive briefings from the General Land Office (GLO) Director of Contract Management at least once a year regarding the status of all contracts under \$1 million. (Management action – nonstatutory)

**Recommendation 2.9, Adopted** — Direct SLB to develop, adopt, and implement clear contract monitoring policies and include them in the contract manual and training. (Management action – nonstatutory)

**Recommendation 2.10, Adopted** — Direct GLO to develop a training policy and provide contract management training for project managers and other staff involved in the contracting process. (Management action – nonstatutory)

## NEW RECOMMENDATIONS ADDED BY THE SUNSET COMMISSION

**Annual joint public meeting, Modified** — Require an annual joint, public meeting of SLB and SBOE to discuss the investment of the dually managed PSF. Authorize each board to excuse a board member's absence from the meeting, and authorize SBOE to delegate attendance at the meeting to a committee.

**Statutory cap on SLB real estate investments, Modified** — Clarify in statute that the 15 percent cap on SLB real estate investments applies to SLB's real assets investments, and specify the cap is measured against all assets held by SLB and SBOE as part of the PSF.

## **Provisions Added by the Legislature**

No provisions were added by the Legislature.

## **Fiscal Implication Summary**

The Sunset Commission's recommendations on SLB, as enacted in Senate Bill 608, will not have a fiscal impact to the state. Duties and responsibilities associated with implementing the provisions of the bill can be accomplished using existing resources.



# VETERANS' LAND BOARD

## *Senate Bill 607*

### Summary

Established in the Texas Constitution in 1946 and housed at the General Land Office (GLO), the Veterans' Land Board (VLB) provides land, home, and home improvement loans; long-term nursing care; and burial and interment services to veterans and their families. As a constitutionally-created board, VLB is subject to review, but not abolishment under the Sunset Act. Rather, the Sunset Commission focused on strengthening VLB's procurement and contracting operations, since the board contracts for the administration of many of its large programs, including the servicing of its home loan program and the construction and operation of its veterans nursing homes and cemeteries.

Senate Bill 607 updates standard good government requirements related to board member training and separation of responsibilities, and specifies that VLB will be subject to review, but not abolishment, again in 2031. Other commission recommendations require VLB to ensure all of its contracting processes adhere to best practices, including requiring board oversight of significant contracts, establishing and implementing consistent contract monitoring policies, and improving training of project managers on how to monitor contractor performance.

The following material summarizes results of the Sunset review of VLB, including management actions directed to the agency that do not require legislative action.

### ISSUE 1 — *Contracting*

**Recommendation 1.1, Adopted** — Direct VLB and GLO staff to work together to develop and require regular training for staff involved in the VLB contracting process to effectively monitor contracts. (Management action – nonstatutory)

**Recommendation 1.2, Adopted** — Direct VLB to work with GLO to further develop written policies outlining clear authority over the board's contracting functions, including the roles of project management and other program staff. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct VLB and GLO to develop a framework for program staff to identify significant contract compliance issues and a clear process for requiring the reporting and documenting of these issues for review. (Management action – nonstatutory)

**Recommendation 1.4, Adopted** — Direct VLB to develop and adopt written policies establishing criteria for all levels of contract review, including board review of contracts over \$1 million. Additionally, direct VLB to receive briefings from the GLO Director of Contract Management at least once a year regarding the status of all contracts under \$1 million. (Management action – nonstatutory)

## ISSUE 2 — *Governance*

**Recommendation 2.1, Modified** — Update the standard across-the-board requirement related to board member training, including a requirement for each board member to attest to both receiving and reviewing the training manual annually.

**Recommendation 2.2, Adopted** — Apply the Sunset across-the-board recommendation regarding policies to separate policymaking and staff functions.

**Recommendation 2.3, Adopted** — Continue the VLB loan reporting requirement.

**Recommendation 2.4, Adopted** — Update VLB's statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 2.5, Adopted** — Direct VLB to ensure stakeholders have access to board information and the public has an opportunity to appear before the board by May 1, 2019. (Management action – nonstatutory)

**Recommendation 2.6, Adopted** — Direct VLB to track complaint data and make the complaint process accessible to the public by March 15, 2019. (Management action – nonstatutory)

### **Provisions Added by the Legislature**

No provisions were added by the Legislature.

### **Fiscal Implication Summary**

The Sunset Commission's recommendations on VLB, as enacted in Senate Bill 607, will not have a fiscal impact to the state. The provisions of the bill can be implemented with existing resources.

———— **SUNSET COMMISSION DECISIONS**  
**NOVEMBER 2018**





# SUNSET COMMISSION DECISIONS

## SCHOOL LAND BOARD

### Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the School Land Board (SLB), as well as modifications and new recommendations raised during the public hearing.

Established by the Legislature in 1939, SLB oversees the management, sale, and leasing of over 13 million acres of Permanent School Fund (PSF) land, which generates revenue the board uses to purchase additional real estate and make investments that ultimately help fund public education. The board shares management of the PSF with the State Board of Education. Since the last Sunset review of SLB in 1984, the board's investment authority has greatly expanded. In 2001, the Legislature gave the board authority to make investments to generate revenue for the PSF; prior to this, the State Board of Education invested the revenues. The Legislature expanded SLB's investment authority further in 2005 and 2007, allowing the board to invest in real estate, energy, and infrastructure, in addition to land.

Although the review found no significant problems within the investment program, the Sunset Commission determined the board needs to implement additional best practices to better guide its investment process, strengthen transparency and oversight of its investments, and improve coordination with the State Board of Education. The commission recommends SLB adopt rules to align its investment policy and strategies with those of the State Board of Education, report more detailed information about its investment performance, and meet annually with the State Board of Education to discuss the investment of the dually managed PSF. These changes would allow the board, State Board of Education, Legislature, and others to more fully understand SLB's investment program and better ensure a successful investment portfolio is maintained in the future.

Additionally, the commission found the work of SLB in overseeing PSF land and investments is hampered by the board's small size, which prevents the board from forming committees or even having informal discussion between board members. The commission recommends expanding the board from three to five members to allow the board to operate more effectively. Other recommendations would improve SLB's contract monitoring processes and apply standard review elements to the board's statute. Along with these improvements, the commission recommends continuing SLB for 12 years.

### ISSUE 1

*While Well Performing, the School Land Board Should Improve Transparency and Oversight of Its Investments.*

**Recommendation 1.1, Adopted as Modified** — Direct SLB to adopt rules to guide its investment policy and strategies. Also direct SLB to align its investment policy and strategies with the rules and statutes that apply to the part of the Permanent School Fund (PSF) managed by the State Board of Education (SBOE). (Management action – nonstatutory)

**Recommendation 1.2, Adopted as Modified** — Direct SLB to adopt rules for the size, membership, and responsibilities of the investment advisory committee. Direct SLB to include a requirement in the rules that a majority of the members of the investment advisory committee must have expertise in the management of a financial institution or other business in which investment decisions are made. (Management action – nonstatutory)

**Recommendation 1.3, Adopted as Modified** — Direct SLB to publicly report more detailed investment information in the *PSF Comprehensive Annual Financial Report*, including the inception date of the fund as well as investment benchmarks and performance for one year, three years, five years, 10 years, and since inception. Also direct SLB to provide SBOE a quarterly report including returns for the investment benchmark and investments themselves, including target weight by sector, and actual investment and commitment by sector. (Management action – nonstatutory)

**Recommendation 1.4, Adopted** — Direct SLB to document the division of responsibilities for its investment management staff. (Management action – nonstatutory)

## ISSUE 2

*Texas Has a Continuing Need for the School Land Board, but Changes to the Board's Structure and Contracting Processes Would Improve Operations.*

**Recommendation 2.1, Adopted** — Continue the School Land Board for 12 years.

**Recommendation 2.2, Adopted as Modified** — Expand the board from three to five members, and require the governor and attorney general to each appoint a new public member from a list of six people submitted by the State Board of Education. If the governor or attorney general chooses not to make an appointment from the first list, the State Board of Education would submit a second list of six people from which to choose.

**Recommendation 2.3, Adopted as Modified** — Apply the standard across-the-board requirement related to board member training. Also require SLB board members to receive an in-depth training regarding SLB's investment programs and strategies, as well as a comprehensive overview of the PSF.

**Recommendation 2.4, Adopted** — Apply the standard across-the-board requirement related to separation of duties.

**Recommendation 2.5, Adopted** — Apply the standard across-the-board requirement related to public testimony.

**Recommendation 2.6, Adopted** — Apply the standard across-the-board requirement related to complaints.

**Recommendation 2.7, Adopted** — Eliminate the duplicative economic impact of PSF investments reporting requirement, and continue SLB's four other required reports.

**Recommendation 2.8, Adopted as Modified** — Direct SLB to review and approve large contracts. Also direct SLB to receive briefings from the GLO Director of Contract Management at least once a year regarding the status of all contracts under \$1 million. (Management action – nonstatutory)

**Recommendation 2.9, Adopted** — Direct SLB to develop, adopt, and implement clear contract monitoring policies and include them in the contract manual and training. (Management action – nonstatutory)

**Recommendation 2.10, Adopted** — Direct GLO to develop a training policy and provide contract management training for project managers and other staff involved in the contracting process. (Management action – nonstatutory)

## ADOPTED NEW RECOMMENDATIONS

### Annual Joint Public Meeting

Require an annual joint, public meeting of SLB and SBOE to discuss the investment of the dually managed PSF. The two boards would discuss asset allocation and other investment issues for the PSF as a whole, in a public meeting subject to the Open Meetings Act.

### Statutory Cap on SLB Real Estate Investments

Clarify in statute that all SLB assets, including cash, are part of the calculation of the 15 percent cap in statute on SLB real estate investments, and specify the cap is measured against all assets and cash managed or held by SLB and SBOE.

### Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state. The recommendation to expand the membership of the SLB board from three to five members would result in additional travel expenses for the two new board members. The board should use its administrative fund to pay the estimated additional \$2,840 per year in travel expenses.



# VETERANS' LAND BOARD

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Veterans' Land Board (VLB), as well as modifications raised during the public hearing.

Established in the Texas Constitution in 1946, VLB provides land, home, and home improvement loans; long-term nursing care; and burial and internment services to veterans and their families. As a constitutionally-created board, VLB is subject to review, but not abolishment under the Sunset Act. The commission's recommendations focus on strengthening VLB's procurement and contracting operations, since the board contracts for the administration of many of its large programs, including the servicing of its home loan program, and the construction and operation of its veterans nursing homes and cemeteries.

Despite recent improvements made to VLB's process for developing contracts, the commission concluded additional changes are needed to improve VLB's contract management and monitoring at the program level. The commission recommends VLB make additional improvements to ensure all of its contracting processes adhere to best practices, including establishing and implementing consistent contract monitoring policies, and better training project managers on how to monitor contractor performance. Additionally, the board needs to increase its involvement in overseeing the contracting process, including reviewing contracts over \$1 million and receiving a status briefing on all contracts less than \$1 million at least once a year. These changes will help ensure VLB holds its contractors accountable and gets what it pays for.

## ISSUE 1

*VLB Needs to Make Additional Improvements to Ensure Its Contracts Adhere to Best Practices.*

**Recommendation 1.1, Adopted** — Direct VLB and GLO staff to work together to develop and require regular training for staff involved in the VLB contracting process to effectively monitor contracts. (Management action – nonstatutory)

**Recommendation 1.2, Adopted** — Direct VLB to work with GLO to further develop written policies outlining clear authority over the board's contracting functions, including the roles of project management and other program staff. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct VLB and GLO to develop a framework for program staff to identify significant contract compliance issues and a clear process for requiring the reporting and documenting these issues for review. (Management action – nonstatutory)

**Recommendation 1.4, Adopted as Modified** — Direct VLB to develop and adopt written policies establishing criteria for all levels of contract review, including board review of contracts over \$1 million. Additionally, direct VLB to receive briefings from the GLO Director of Contract Management at least once a year regarding the status of all contracts under \$1 million. (Management action – nonstatutory)

## ISSUE 2

*The Veterans' Land Board's Statute Does Not Reflect Some Standard Elements of Sunset Review and Others Have Not Been Implemented.*

**Recommendation 2.1, Adopted** — Update the standard across-the-board requirement related to board member training.

**Recommendation 2.2, Adopted** — Apply the Sunset across-the-board recommendation regarding policies to separate policymaking and staff functions.

**Recommendation 2.3, Adopted** — Continue the VLB loan reporting requirement.

**Recommendation 2.4, Adopted** — Update VLB's statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 2.5, Adopted** — Direct VLB to ensure stakeholders have access to board information and the public has an opportunity appear before the board. (Management action – nonstatutory)

**Recommendation 2.6, Adopted as Modified** — Direct VLB to track complaint data and make the complaint process accessible to the public by March 15, 2019. (Management action – nonstatutory)

### Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the state or the board.

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**SUMMARY OF SUNSET  
STAFF RECOMMENDATIONS**





# SUMMARY

This report includes the Sunset reviews of both the School Land Board (SLB) and the Veterans' Land Board (VLB). Both of these three-member boards are unique in that they are independent entities within the Texas General Land Office (GLO) chaired by the land commissioner, and all SLB and VLB staff are GLO employees. The review generally found that the boards' programs operated effectively but focused on providing GLO leadership and the boards with more information and implementing consistent policies, which will improve oversight, especially as it related to both boards' contracting processes.

## **School Land Board**

Established by the Legislature in 1939, SLB oversees the management, sale, and leasing of over 13 million acres of Permanent School Fund (PSF) land, which generates revenue the board uses to purchase additional real estate and make investments that ultimately help fund public education. In fiscal year 2017, gross revenue from PSF land totaled \$1.9 billion and investment income totaled \$943 million.

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*The Sunset review paid special attention to SLB investments.*

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Since the last Sunset review of SLB in 1984, the board's authority has greatly expanded. In 2001, the Legislature gave the board authority to make investments to generate revenue for the PSF. Prior to this, SLB only supervised the management, sale, and leasing of PSF lands, and the State Board of Education invested the revenues to benefit the fund. The Legislature expanded SLB's investment authority further in 2005 and 2007, allowing the board to invest in real estate, energy, and infrastructure, in addition to land. Since receiving this authority, the board has grown its portion of the PSF from \$1 billion to about \$6.5 billion. Based on the success of this expanded authority, this review paid special attention to SLB investments.

SLB is not a typical state board and does not provide a direct service to the public, nor does it regulate a profession or industry. The board exists to make money for the PSF through its management of the fund's land and investment portfolio. Although the board's investments perform very well and the review found no significant problems within the investment program, the agency needs to implement additional best practices to better guide the investment process and provide the board and other policymakers with more information about the overall performance of the fund. Having the board adopt clear guidelines to direct the investment policy and strategies, and reporting more detailed information about the fund would allow the board, the Legislature, and others to more fully understand SLB's investment program, and better ensure this successful investment portfolio is maintained in the future.

Additionally, the Sunset review found the work of SLB in overseeing PSF land and investments is hampered by the board's small size. The three board members cannot informally discuss the work of the board without violating the Texas Open Meetings Act, and the board structure leaves only two board members to make important decisions when one board member has a conflict of interest with an investment or an agreement before the board. Also, the board cannot form subcommittees to allow members to develop expertise on certain functions of the board. The addition of more members would allow it to operate more effectively. The other recommendations in this report improve SLB's contract monitoring processes and apply standard review elements to the board's statute. Along with these improvements, Sunset staff recommends continuing SLB for 12 years.

## ***Veterans' Land Board***

Established in the Texas Constitution in 1946, VLB provides land, home, and home improvement loans; long-term nursing care; and burial and interment services to veterans and their families. VLB's programs have expanded since its last Sunset review in 2006, when VLB operated six veterans nursing homes and two veterans cemeteries. Today, VLB operates eight homes, with a ninth scheduled to open in Houston in 2019, and four veterans cemeteries. As a constitutionally-created board, VLB is subject to review, but not abolishment under the Sunset Act, so the review did not address continuation of the board.

Evaluating VLB's procurement and contracting operations was a top priority for the review, since the board contracts for the administration of many of its large programs, including the servicing of its home loan program, and the construction and operation of its veterans nursing homes and cemeteries. In 2016, GLO consolidated its contracting functions and made significant improvements to the front end of its contracting process — creating the requests for proposals, evaluating proposals, awarding bids, and writing contracts. However, additional changes are needed to improve VLB's contract management and monitoring at the program level. VLB needs to make additional improvements to ensure all of its contracting processes adhere to best practices, including establishing and implementing consistent contract monitoring policies, and better training project managers on how to monitor contractor performance. These changes will help ensure VLB holds its contractors accountable and gets what it pays for. Additionally, the board itself needs to be more involved in overseeing the contracting process, particularly when entering into multi-million dollar contracts.

The following material summarizes the Sunset staff recommendations on both SLB and VLB.

## **Issues and Recommendations**

### ***School Land Board***

#### ***Issue 1***

#### **While Well Performing, the School Land Board Should Improve Transparency and Oversight of Its Investments.**

Since receiving the authority to invest PSF revenue in 2001, SLB's portion of the Permanent School Fund has grown significantly and is now worth approximately \$6.5 billion. While the board has had positive returns from its investments, the Sunset review found certain areas where the board could benefit from implementing best practices in public funds investment management and reporting. Specifically,

having more robust investment policies and strategies would provide better guidance to investment staff and help the board hold staff accountable for achieving its investment objectives. Additionally, the composition of SLB's investment advisory committee limits available expertise for board investments, and SLB's investment reports provide limited information on investment performance and the overall performance of the PSF. Having more detailed information on investment returns and asset allocation information publicly available would help the Legislature, stakeholders, and others see how well the board is managing public funds as well as the overall performance of the PSF.

### **Key Recommendations**

- Direct SLB to adopt rules to guide the investment policy and strategies.
- Direct SLB to adopt rules for the size, membership, and responsibilities of the investment advisory committee.
- Direct SLB to publicly report more detailed investment information in the *PSF Comprehensive Annual Financial Report*.

## ***Issue 2***

### **Texas Has a Continuing Need for the School Land Board, but Changes to the Board's Structure and Contracting Processes Would Improve Operations.**

Texas and its public schools benefit from SLB overseeing the sale and lease of public land and related investments that generate revenue for the PSF. However, the three-member board structure limits communication among board members and ultimately its effectiveness. A larger board provides more flexibility to allow board members to develop expertise and make better informed decisions, and allows the board to carry out its duties if members are absent or must recuse themselves from a vote due to conflicts of interest. Additionally, some of SLB's contracting processes do not fully align with best practices, contributing to inconsistencies in contract monitoring.

### **Key Recommendations**

- Continue the School Land Board for 12 years.
- Expand the board from three to five members.
- Direct SLB to review and approve large contracts, and to develop, adopt, and implement clear and consistent contract monitoring policies.

## ***Veterans' Land Board***

### ***Issue 1***

### **The Veterans' Land Board Needs to Make Additional Improvements to Ensure Contracts Adhere to Best Practices.**

VLB manages 71 major contracts, with a value of over \$95 million, to administer its loan, veterans nursing homes, and veterans cemeteries programs. Because VLB is housed within GLO, the board has worked with the agency to begin to centralize its contracting functions but could still improve its processes for

monitoring contractors. Each VLB program manages and monitors its own contracts, contributing to operational inefficiencies, such as a lack of documented policies and procedures for project managers and inconsistent contract oversight by program staff. Standardized contracting policies and procedures, detailing the duties of project managers, and requiring training for staff and board members would improve the quality of VLB's contract oversight.

### **Key Recommendations**

- Direct VLB and GLO staff to work together to develop and require regular training for contracting staff.
- Direct VLB to work with GLO to further develop written policies outlining clear authority over the board's contracting functions, including the roles of project managers and program staff.
- Direct VLB and GLO to develop a framework for identifying, documenting, and reporting contract compliance issues.

## ***Issue 2***

### **The Veterans' Land Board's Statute Does Not Reflect Some Standard Elements of Sunset Review and Others Have Not Been Implemented.**

Among the standard elements considered in a Sunset review are provisions that the Sunset Commission applies across the board to all state agencies under review designed to ensure open, responsive, and effective government. VLB's governing statutes do not include standard provisions relating to board member training, which would ensure members understand the scope of the VLB's rulemaking authority, and policies related to separating policymaking functions of the board from day-to-day administrative functions of staff.

### **Key Recommendation**

- Apply and update standard across-the-board recommendations to VLB.

## **Fiscal Implication Summary**

Overall, the recommendations in this report would not have a fiscal impact to the state. Most of the recommendations are designed to improve the boards' internal operations and efficiency, but the fiscal impact would depend on implementation. However, one issue would have a direct fiscal impact to the School Land Board, as summarized below.

***SLB Issue 2*** — The recommendation to expand the membership of the SLB board from three to five members would result in additional travel expenses for the two new board members. The board should use its administrative fund to pay the estimated additional \$2,840 per year in travel expenses.

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**SCHOOL LAND BOARD  
AT A GLANCE  
JULY 2018**



# SCHOOL LAND BOARD AT A GLANCE

In 1876, Texas enacted a new constitution that established the Permanent School Fund (PSF) and transferred half of the public lands owned by the state to the PSF as an endowment intended to provide a perpetual source of funding for public education.<sup>1</sup> The constitution tasked the General Land Office (GLO) with the management of these lands and the PSF. In 1939, the Legislature created the School Land Board (SLB) within GLO to supervise the management, sale, and leasing of these lands with the purpose of maximizing revenue that is deposited into the PSF.<sup>2</sup> Today, the PSF consists of a diversified investment portfolio, state lands, mineral rights, and royalty earnings. The State Board of Education manages the fund's securities portfolio, and SLB oversees the fund's land holdings, generating revenue through the sale and lease of land; commercial and right-of-way easements; and oil, natural gas, and mineral revenues, and manages a real assets investment portfolio.

As of August 2017, GLO held over 13 million acres of PSF lands.<sup>3</sup> The portion of revenue GLO maintains for purchasing additional real estate and making investments resides in the Real Estate Special Fund Account (RESFA).<sup>4</sup> In fiscal year 2017, gross revenue from PSF lands and SLB investments totaled approximately \$1.9 billion.<sup>5</sup> Both the land commissioner on his own and SLB manage PSF land transactions, but SLB alone approves investments in the RESFA and any allowable distribution of money from the RESFA to the State Board of Education and the Available School Fund.

To achieve its goal of managing transactions that contribute to the PSF, the board, with administrative support from GLO staff, carries out the following key activities:

- Sells and trades PSF lands
- Leases PSF lands for energy development, mining, and various coastal uses
- Uses PSF proceeds, such as from mineral leases and royalties, to acquire additional property and mineral interests on behalf of the PSF
- Approves investments
- Leases recreational cabins on the Texas coast

## Key Facts

- **Governance.** The board consists of three members, including the land commissioner who serves as the chair, one public member appointed by the governor, and one public member appointed by the attorney general. The public members must be confirmed by the Senate and serve two-year terms. The chart on the following page, *School Land Board*, shows the board's current makeup. The board meets publicly as often as twice per month and uses two committees, the investment advisory committee and the pooling committee, to assist with investment decisions and to review applications to combine tracts of PSF land.<sup>6</sup> The investment advisory committee consists of four GLO staff, including the chief investment officer, chief clerk, deputy director of special operations, and senior deputy director of asset enhancement. The pooling committee consists of a representative from GLO, the governor's office, and the office of the attorney general.



### **School Land Board**

<b>Member</b>	<b>Term/Appointment Dates</b>	<b>Qualification</b>
The Honorable George P. Bush, Chair	January 2015–Present	Land Commissioner
Gilbert Burciaga	August 2017–September 2019 Governor Appointee	Public Member
Scott Rohrman	August 2017–September 2019 Attorney General Appointee	Public Member

- **Staffing.** The board does not have its own staff; instead, GLO staff support the board and its operations. In fiscal year 2017, GLO employed approximately 163 staff who perform some SLB functions at least part of the time, with 145 employees working in Austin and 18 employees working in field offices around the state. Field staff, located in cities such as Alpine, Amarillo, Corpus Christi, Houston, and Odessa, conduct land appraisals, oversee energy leases, and inspect GLO coastal properties. GLO does not track equal employment opportunity statistics separately for staff that support SLB. Because of the board’s small size, Sunset staff did not prepare an analysis comparing the board’s workforce composition to the overall civilian labor force.
- **Funding.** The board primarily funds its activities with lease revenues and fees, and earnings from the investment of funds in the RESFA. The chart in Appendix A shows the flow of funds through the RESFA as well as general revenue funding for SLB functions not related to the RESFA. In fiscal 2017, oil and gas revenues comprised the largest source of revenue for the RESFA, totaling over \$900 million.

GLO uses a portion of the RESFA, including collected fees, to fund administration, management, and oversight of the PSF. GLO receives administrative fees from energy and land leases and fee revenue from the SLB-managed recreational cabin program, while rental income and other lease fees are deposited into the RESFA. In fiscal year 2017, SLB collected \$28.9 million in administrative fee revenue and GLO spent \$20.3 million in board-related administrative expenses. SLB does not track the use of Historically Underutilized Businesses in purchasing goods and services separately from GLO.

In 2001, the Legislature gave SLB the authority to deposit land sale, mineral lease, and mineral royalty proceeds in the RESFA and to use those funds to buy real property for the PSF.<sup>7</sup> In 2007, SLB received authority to use RESFA funds to invest in real estate, energy, infrastructure, and “other interests,” and to deposit investment proceeds in the RESFA.<sup>8</sup> Since receiving this authority, the fair market value of SLB investments, not including cash, has grown from approximately \$63 million to \$3.2 billion. The board may, but is not required to, distribute money from the RESFA either to the State Board of Education for investment in its portion of the PSF, or to the state’s Available School Fund, which pays for public school instructional materials, classroom technology, as well as other expenses.<sup>9</sup> In fiscal year 2017, SLB distributed \$200 million to the State Board of Education, but did not distribute money to the Available School Fund.

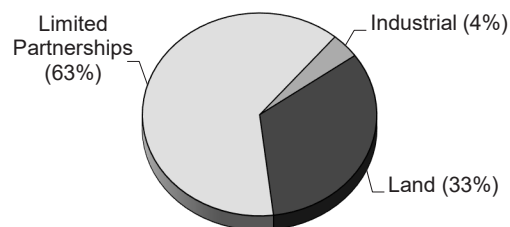
- **Investments.** The board approves investments managed by GLO’s investment management staff. The board’s total investments, including cash, were valued at about \$6.5 billion at the end of fiscal year 2017. Internal portfolio investments, valued at \$290.4 million in fiscal year 2017, consist primarily of raw land and private real estate development partnerships. The chart on the following page, *SLB Internal Investments Property Types*, shows the types of property in the board’s internally-managed investments. Statute limits externally-managed investments, currently valued at about



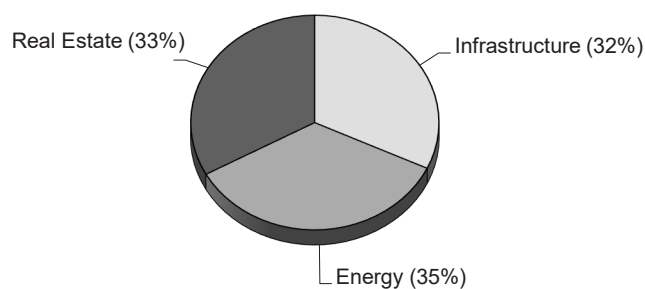
\$3.2 billion, to private-market energy, real estate, and public infrastructure investments, shown in the chart, *SLB Asset Allocation for External Investments*.<sup>10</sup> GLO contracts with external investment managers to invest SLB's external portfolio. GLO also contracts for the accounting, performance measurement, and reporting services for SLB's entire investment portfolio. While SLB oversees the investment of all PSF funds at GLO, some programs that generate proceeds for the PSF, including the State Energy Marketing Program and some types of leases, are managed by agency staff, not by the board.

- **Land sale and acquisition.** The board approves sales of PSF real estate, approves trades of PSF land, and has the first option to buy underutilized state land and state agency property authorized for sale by the Legislature or the governor. In fiscal year 2017, SLB sold 9,532 acres of land on 28 properties, totaling over \$50 million, but did not trade or acquire any new land that year. Proceeds from land sales are deposited into the RESFA and used to make new investments.
- **Oil, mineral, and gas leases.** The board approves leases of PSF land for oil and gas development, mineral mining and exploration, and hard mineral production. The proceeds from these leases are deposited into the RESFA for investment. The board also approves pooling agreements and production sharing agreements, in which different tracts of state lands are combined to form a larger block for oil and gas drilling. In fiscal year 2015, SLB began awarding oil and gas leases by competitive sealed bid online, which has significantly increased the average sale price for PSF land leases. Previously, all bids were made in person. In fiscal year 2017, SLB approved 186 mineral leases, 270 pooling agreements, and contributed about \$900 million to the RESFA from lease bonuses, royalties, and rental fees. In the same year, GLO conducted 167 lease audits and 2,170 inspections.
- **Coastal land leases.** The board approves leases of coastal PSF land for various purposes, such as commercial development and the right to cross onto coastal PSF land to build roadways, piers, or energy lines. In fiscal year 2017, SLB approved nine coastal land leases totaling \$632,538 in revenue, which it deposits into the RESFA.
- **Recreational cabins.** The board oversees permits, inspections, and renewals for 401 recreational cabins on PSF land on the Texas coast. The boat-only accessible fishing cabins were built in the 1970s on islands created after the U.S. Army Corps of Engineers dredged inter-coastal waterways. In 1973, the Legislature directed SLB to permit and manage the cabins, and prohibited the construction of new cabins. The cabin program is self-supporting through fees and generated \$205,058 in revenue in fiscal year 2017.<sup>11</sup> Cabin rent averages \$600 per year. By statute, cabins are considered state-owned structures and the permit authorizes use of the site, not ownership of the structure, though permit holders are responsible for all maintenance.

**SLB Internal Investments Property Types  
FY 2017**



**SLB Asset Allocation for External Investments  
Target FY 2017**



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<sup>1</sup> Sections 2 and 5, Article 7, Texas Constitution.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Page 465, Chapter 3 (H.B. 9), Acts of the 46th Texas Legislature, Regular Session, 1939.

<sup>3</sup> Texas General Land Office & Texas Veterans' Land Board, *2017 Unaudited Annual Financial Report*, 71, <http://www.glo.texas.gov/the-glo/reports/budget/files/fy2017-unaudited-annual-financial-report-tx-glo-and-vlb.pdf>.

<sup>4</sup> Section 51.401, Texas Natural Resources Code.

<sup>5</sup> Texas General Land Office & Texas Veterans' Land Board, *2017 Unaudited Annual Financial Report*, 149, <http://www.glo.texas.gov/the-glo/reports/budget/files/fy2017-unaudited-annual-financial-report-tx-glo-and-vlb.pdf>.

<sup>6</sup> 31 T.A.C. Section 9.81(b)(2).

<sup>7</sup> H.B. 3558, 77th Texas Legislature, Regular Session, 2001.

<sup>8</sup> H.B. 3699, 80th Texas Legislature, Regular Session, 2007.

<sup>9</sup> Section 5, Article 7, Texas Constitution; Section 51.413, Texas Natural Resources Code.

<sup>10</sup> Sections 51.011(a-1) and 51.401, Texas Natural Resources Code.

<sup>11</sup> Coastal Public Lands Management Fee Account No. 450, page VI-24, Article VI (H.B. 1), Acts of the 84th Legislature, Regular Session, 2015 (the General Appropriations Act).

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# **SCHOOL LAND BOARD ISSUES**



# ISSUE 1

## *While Well Performing, the School Land Board Should Improve Transparency and Oversight of Its Investments.*

### Background

Together, the State Board of Education and the School Land Board (SLB) manage the Permanent School Fund (PSF), an endowment fund established by the Texas Constitution to be a perpetual source of funding for public education.<sup>1</sup> At the end of fiscal year 2017, the total market value of the PSF was approximately \$39.2 billion.<sup>2</sup>

The State Board of Education primarily manages the fund's securities portfolio, and SLB manages the fund's real assets investment portfolio as well as over 13 million acres of PSF lands. The State Board of Education was the sole manager of PSF investments until 2001 when the Legislature granted SLB, which is housed within the General Land Office (GLO), the authority to set aside a portion of the revenues it generates from oil, natural gas and mineral leases on PSF land to buy additional property and mineral interests for the benefit of the PSF.<sup>3</sup> The Legislature expanded SLB's investment authority in 2005 and 2007, allowing the board to invest in real estate, energy, and infrastructure, in addition to land. SLB deposits the portion of revenue it maintains for purchasing additional land and making additional investments in the Real Estate Special Fund Account (RESFA) at GLO.<sup>4</sup>

SLB separates its investment portfolio into two different sections: externally-managed, private-markets real assets investments and internally-managed investments of land and real estate, as described in the textbox, *SLB Investment Portfolio*. SLB has grown its investments from about \$152 million in fiscal year 2002 to about \$6.5 billion, including cash, at the end of fiscal year 2017, approximately 17 percent of the fund.<sup>5</sup> The historical growth of SLB investments is shown in the chart on the following page, *SLB Permanent School Fund Investment History*. The State Board of Education's portion of the PSF totaled about \$33 billion, or about 83 percent of the fund at the end of fiscal year 2017.<sup>6</sup> The pie chart on the following page, *Permanent School Fund Investments*, shows the division of PSF funds between SLB and the State Board of Education.

Texas law provides SLB significant discretion over the management and investment of its portion of the PSF and the board has an investment policy that establishes its investment objectives, risk management policies, and management and monitoring procedures. State law and board rule focus on how much notice the board must give to the State Board of Education and other state entities if the board decides to make a discretionary distribution of money from the RESFA.<sup>7</sup> The board may, but is not required to, distribute RESFA funds each year either to the State Board of Education for investment in its portion of the PSF or to the state's Available School Fund, which pays for public school instructional

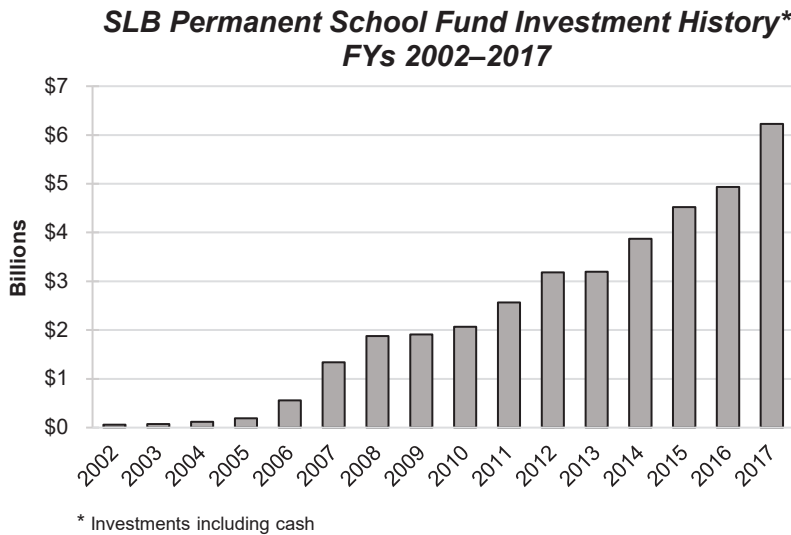
#### ***SLB Investment Portfolio***

Internally-managed investments (raw land and real estate managed by deputy director of asset management and nine staff)

- land
- industrial real estate
- limited partnerships in real estate

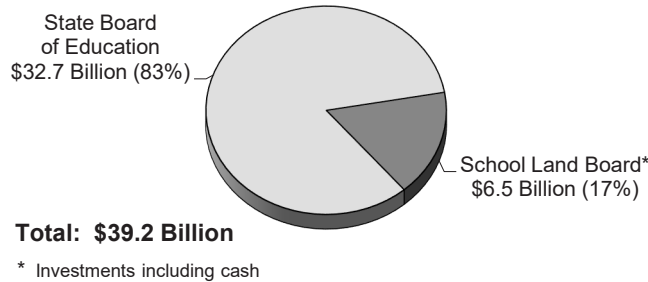
Externally-managed investments (private-markets investments managed by the chief investment officer and four investment staff)

- real estate
- energy, minerals, and other real assets
- infrastructure



materials and classroom technology, as well as other expenses.<sup>8</sup> In 2016, SLB adopted a resolution that approved the distribution of \$490 million from the RESFA to the State Board of Education in fiscal years 2018 and 2019, as well as \$300 million to the Available School Fund in fiscal year 2019.<sup>9</sup> In fiscal year 2017, SLB distributed \$200 million to the State Board of Education, but did not distribute money to the Available School Fund.<sup>10</sup>

**Permanent School Fund Investments  
(Market Value) – FY 17**



## Findings

### The School Land Board’s investment policy and strategies could be improved by incorporating best practices in the Texas Public Funds Investment Act.

State agencies make their own determinations regarding whether they are subject to the Public Funds Investment Act.<sup>11</sup> While not specifically exempt, SLB does not believe it is subject to the act, but the board could still benefit from following certain best practices in the act, especially as it relates to a state entity’s investment policy. Other state entities that invest public funds are not subject to the act but still meet many of its requirements. The State Board of Education, which manages the other portion of the PSF, is exempt from the act but follows specific requirements for its investment policy in Texas Administrative Code and Texas Education Code that are similar to requirements in the act.<sup>12</sup> The Employees Retirement System, a state entity that invests public funds, is exempt from the act but also has a long and detailed investment policy which meets most standards in the act, and has specific and detailed investment policy guidance in statute or rule.<sup>13</sup> SLB does not have similar guidance in statute or rule outside of a requirement in statute for the board to use the prudent investor standard.<sup>14</sup> SLB could benefit from developing more detailed investment policies and distinct investment strategies.

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*SLB could benefit from developing detailed investment policies and strategies.*

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- **Detailed investment policies.** Investment policies provide direction for how a board should invest funds, and usually focus on balancing the desired rate of return with a comfortable level of risk and determining the mix of assets in which to invest the fund. Fully developed investment policies also explain the rationale for each investment policy decision and provide enough information to be able to evaluate the success of investments.<sup>15</sup> The textbox, *Texas Public Funds Investment Act Requirements for Investment Policies and Strategies*, describes the best practices for investment policies included in the act. While SLB's investment policy includes some of these best practices, such as listing the types of authorized investments, addressing investment diversification, and emphasizing the safety of principal, it does not address others, such as investment liquidity and the quality and capability of investment management staff. SLB's portion of the PSF has grown significantly since 2001, currently nearing \$6.5 billion in investments and cash. As such, the importance of having a detailed policy in place is even more critical to ensure the board has clear guidance for investments and provides informed oversight for investment of PSF funds. A detailed investment policy also would provide specific guidance to new investment staff and would help the board hold staff accountable for achieving investment objectives.

***Texas Public Funds Investment Act  
Requirements for Investment Policies and  
Strategies***

- The governing body of an investing entity must adopt a written investment policy and a separate written investment strategy for each of the funds or group of funds under its control.
- The investment policies for an investing entity must primarily emphasize safety of principal and liquidity; address investment diversification, yield, and maturity, and the quality and capability of investment management staff.
- The investment policies must include a list of the types of authorized investments as well as other requirements related to investment maturity and liquidity.

- **Distinct investment strategies.** The Public Funds Investment Act requires the governing body of an investing entity to adopt a separate written investment strategy for each of the funds or group of funds under its control, and specifies each strategy must describe the investment objectives for the particular fund using certain priorities, such as the suitability of the investment to the financial requirements of the entity, diversification, and yield.<sup>16</sup> SLB has adopted strategies for almost all of the types of investments it makes, but some of the board's strategies for investments in energy, real estate, infrastructure, and raw land do not explicitly address liquidity or preservation and safety of principal, a best practice under the act.

Additionally, a 2017 audit report by the State Auditor's Office found that SLB and GLO did not have policies and procedures designed to govern the limited liability companies they use to make PSF investments.<sup>17</sup> The board is currently drafting investment guidelines for its use of limited liability companies, limited partnerships, and similar joint venture investment entities, but the board's current strategies and policy for these investment entities are too general and do not meet the standards in the act. Additional direction from board investment strategies also would help improve accountability, ensuring investment staff plan for future portfolio success based on board-approved guidelines.

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*A 2017 State  
Auditor's Office  
report found that  
SLB and GLO  
did not have  
policies to govern  
limited liability  
companies'  
investments.*

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### **The composition of SLB’s investment advisory committee limits available expertise to guide SLB investments.**

While SLB board members have the ultimate authority to approve PSF investments, the board relies on the recommendations of an investment advisory committee when making investment decisions. GLO’s chief investment officer, an investment professional, chairs the committee. The land commissioner selects

#### ***SLB Investment Advisory Committee Membership***

- chief investment officer
- chief clerk
- deputy director of special operations
- senior deputy director of asset enhancement

at least three other GLO staff to serve as members, and can select other qualified individuals to serve on the committee as well. Currently, all investment advisory committee members are GLO staff members, as shown in the textbox, *SLB Investment Advisory Committee Membership*. The investment advisory committee identifies potential SLB investment opportunities and performs due diligence on potential investments before they are presented to the board for consideration.

Having an investment advisory committee is a common best practice for state entities that invest public funds. State statute or agency rules usually establish the committees and direct the membership, including needed expertise, and operations of those committees, such as those at the Employees Retirement System and the Texas Education Agency.<sup>18</sup> For example, statute requires ERS investment advisory committee members to have expertise in managing a financial institution or other business in which investment decisions are made, and rule provides that the State Board of Education appoints the members of its investment advisory committee.

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*The investment advisory committee only includes one investment professional.*

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Also, the Texas Education Agency uses several different internal committees to make comparable investment decisions for each asset class in which it invests the PSF. Each investment committee includes four investment professionals, including the asset class manager and the chief investment officer. In contrast, SLB only has one.

In contrast, SLB only has one, four-member investment advisory committee reviewing all its investments in real estate, energy, and infrastructure. SLB’s investment advisory committee, which reviews and makes recommendations for investments worth hundreds of millions of dollars and an investment portfolio of approximately \$6.5 billion, is not established in statute or rule. The committee currently only includes one investment professional, although SLB contracts with an outside investment advisor, Townsend Group, to provide additional investment expertise to the committee. Additionally, the committee makes many important decisions, but only reports to the board on the investment opportunities it has approved for board consideration. As part of its investment review, the advisory committee can turn down potential investment opportunities without the board’s knowledge. Allowing SLB to have more information about all potential investments, including the ones the advisory committee rejected and the reasoning behind the rejection, could help board members make more informed decisions about future investments.



## SLB's public investment reports provide limited information on investment performance and the overall performance of the PSF.

While SLB investment staff collect and report detailed information and data to SLB board members on whether investments meet asset allocation and return targets, SLB does not provide this level of detail in its public reports. The textbox, *SLB Investment Reports*, describes the limited information provided in each of SLB's public investment reports. Information on year-over-year returns and asset allocation information is important to help the Legislature, stakeholders, and the public see how well SLB's investments are performing and how successfully the board is managing public funds, particularly since SLB's investments support the dually-managed PSF.

### ***SLB Investment Reports***

- ***GLO Annual Financial Report:*** In the Annual Financial Report, SLB reports the fair value of investments in the internal and external portfolios, RESFA cash in the state treasury, unfunded commitments, and noncurrent investments.
- ***Biennial Report to the Legislature on RESFA Investments:*** SLB submits a report to the Legislature every other year that assesses the direct and indirect economic impact of the investment of RESFA funds, the intended amount of investments, expected rate of return, the amount the board expects to distribute to the ASF or the State Board of Education, distribution of board investments by county, and the effect of investments on the state's level of employment, personal income, and capital investment.
- ***Texas Permanent School Fund Comprehensive Annual Financial Report:*** In a joint report with the Texas Education Agency, SLB reports the total value of the board's investments as well as gross time-weighted returns and the internal rate of return for the board's portfolios.
- ***Legislative Budget Board Annual Report on Major State Investment Funds:*** While SLB reports more detailed investment performance information for this report, including PSF contributions and distributions, investment costs, performance benchmarks, and the annual rate of return, this report is not published regularly, limiting the availability and usefulness of this information. The most recent published report is for fiscal year 2015.

By contrast, the State Board of Education and the Texas Education Agency, which manage the majority of the PSF investments, publicly reports this level of detail. In the *PSF Comprehensive Annual Financial Report*, they publish returns and benchmarks for each fund in their PSF investment portfolio for each fiscal year, as well as the strategic asset allocation and a description of how each asset class is managed. The information SLB submits for inclusion in this report only includes a one-year, three-year, and five-year average for returns and benchmarks for all of its investments collectively. SLB does not report this information separated out by externally-managed investments and internally-managed investments and does not report asset allocation or fund management information for its PSF investment portfolios.

### **SLB lacks clear division of responsibilities for its core investment staff.**

The board lacks a clear division of responsibilities for staff in GLO's investment management division, which poses a risk to the management of public PSF funds if key staff, particularly the chief investment officer, leave the agency. The chief investment officer, supported by a staff of four, manages all aspects of PSF investments, worth about \$6.5 billion at the end of fiscal year 2017. By contrast, the Texas Education Agency employs over 50 staff to manage about \$33 billion in PSF investments in several asset classes for the State Board of Education. While having one person manage all aspects of PSF investments when SLB's portion of the PSF was in the millions was acceptable, as the board's investments have grown into the billions, so has the need for more clearly defined responsibilities and delegation of authority. Turnover among key staff members is inevitable, and having clearly defined investment responsibilities reduces the risk of disruption to PSF investments when key staff leave the agency. Moreover, while SLB invests in only one asset class, the board makes investments in several different industry sectors within that class, including energy, real estate, and infrastructure, each of which requires specialized knowledge. Developing job descriptions that address the duties related to investments in each of those sectors would improve SLB's ability to plan for staff turnover and better assess the skills, training, and education needed to continue to make successful investments.

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*As the board's investments have grown into the billions, so has the need for more clearly defined investment staff responsibilities.*

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GLO maintains job descriptions for each of the board's investment management staff, but does not clearly define who makes investment recommendations and how those recommendations are made. For example, the chief investment officer position description is very general and broad, simply stating the chief investment officer "manages all aspects of the GLO PSF real assets investment portfolio," which does not specify the individual decisions that must be made on a daily basis, the responsibilities a new person would need to assume in this role, or ability to delegate. GLO's asset management division, which handles approximately \$300 million in PSF land investments and investments on property managed by SLB, documents the specific division of responsibilities between its internal investment staff. The board's investment management staff could benefit from using this as a model for better defining and delineating staff roles and responsibilities.

## **Recommendations**

### ***Management Action***

#### **1.1 Direct SLB to adopt rules to guide its investment policy and strategies.**

Under this recommendation, SLB should adopt rules providing guidelines for the board's investment policy and strategies. At a minimum, the guidelines should ensure the investment policy includes a discussion of the qualifications, competency and experience of investment management staff, and that the board reviews the policy annually. The guidelines should also include a discussion of both liquidity requirements and the preservation and safety of the principal. The guidelines should ensure the board

develops separate investment strategies for investments involving limited partnerships and limited liability companies. Adopting these guidelines would improve the continuity of the investment policy and strategies during periods of staff turnover and provide a baseline against which to evaluate future changes in SLB's investment strategy. The board should adopt the rules by December 1, 2019.

### **1.2 Direct SLB to adopt rules for the size, membership, and responsibilities of the investment advisory committee.**

This recommendation would direct SLB to adopt rules defining the composition and operations of the board's investment advisory committee. At a minimum, the rules should state how many people serve on the committee, including the minimum number of investment professionals. The rules should also establish for committee activities that would allow the board to have more information about the status of investment opportunities. For example, the board could adopt a requirement for the committee to brief the land commissioner and board members on all considered investments, including investments the committee rejected. The board should adopt these rules by December 1, 2019.

### **1.3 Direct SLB to publicly report more detailed investment information in the *PSF Comprehensive Annual Financial Report*.**

At a minimum, SLB should provide the following information for each fiscal year for inclusion in the *PSF Comprehensive Annual Financial Report*:

- Returns for each type of investment the board makes — infrastructure, land, real estate, energy, limited liability companies, and limited partnerships
- Returns for the internal and external portfolios by fiscal year for the last five years, as well as a three year, five year, and 10 year average
- Investment benchmarks
- Information on the board's asset allocation target

Providing more detailed and comparable information about SLB's portion of the PSF would help the Legislature better evaluate the overall health of the entire PSF fund and improve the ability of all the agencies involved in PSF investments to evaluate risks and make better investment decisions for all parts of the fund.

### **1.4 Direct SLB to document the division of responsibilities for its investment management staff.**

SLB should clearly define the roles and responsibilities of investment management staff by documenting the division of responsibilities between the chief investment officer and other staff. At a minimum, the division of responsibilities should specify which responsibilities the chief investment officer may delegate to other staff, and which staff have management authority for each sector, for example, energy, real estate, or infrastructure, in which the board invests.

## **Fiscal Implication**

These recommendations would not have a fiscal impact.

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1 Article VII, Texas Constitution; All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 43.001, Texas Education Code.

2 The Texas Permanent School Fund, *Texas Permanent School Fund Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2017*, accessed July 12, 2018, [https://tea.texas.gov/Finance\\_and\\_Grants/Texas\\_Permanent\\_School\\_Fund/Texas\\_Permanent\\_School\\_Fund\\_-\\_Annual\\_Report/](https://tea.texas.gov/Finance_and_Grants/Texas_Permanent_School_Fund/Texas_Permanent_School_Fund_-_Annual_Report/).

3 Section 51.401, Texas Natural Resources Code.

4 The Texas Permanent School Fund, *Texas Permanent School Fund Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2017*, accessed July 12, 2018, [https://tea.texas.gov/Finance\\_and\\_Grants/Texas\\_Permanent\\_School\\_Fund/Texas\\_Permanent\\_School\\_Fund\\_-\\_Annual\\_Report/](https://tea.texas.gov/Finance_and_Grants/Texas_Permanent_School_Fund/Texas_Permanent_School_Fund_-_Annual_Report/).

5 Ibid.

6 Ibid.

7 31 T.A.C. Section 151.6; Section 51.402, Texas Natural Resources Code; Sections 51.413 and 51.4131, Texas Natural Resources Code; 31 T.A.C. Section 151.6.

8 Section 5, Article 7, Texas Constitution; Section 51.413, Texas Natural Resources Code.

9 The Texas Permanent School Fund, *Texas Permanent School Fund Comprehensive Annual Financial Report for the Fiscal Year Ending August 31, 2017*, accessed July 12, 2018, [https://tea.texas.gov/Finance\\_and\\_Grants/Texas\\_Permanent\\_School\\_Fund/Texas\\_Permanent\\_School\\_Fund\\_-\\_Annual\\_Report/](https://tea.texas.gov/Finance_and_Grants/Texas_Permanent_School_Fund/Texas_Permanent_School_Fund_-_Annual_Report/).

10 Ibid.

11 Chapter 2256, Texas Government Code.

12 19 T.A.C. Sections 33.10, 33.15, 33.20, 33.25, 33.30.

13 Porter Wilson, *Employees Retirement System of Texas Investment Policy May 23, 2018*, accessed July 7, 2018, <https://ers.texas.gov/Doing-Business-with-ERS/PDFs/ERS-Investment-Policy.pdf>.

14 Section 51.402, Texas Government Code.

15 Jeffery V. Bailey, Jesse L. Phillips, and Thomas M. Richards, *A Primer for Investment Trustees*, accessed June 22, 2018, <https://www.cfapubs.org/doi/pdf/10.2470/rf.v2011.n1.1>.

16 Section 2256.005, Texas Government Code.

17 Lisa R. Collier, *A Report on the Audit of the Permanent School Fund's Fiscal Year 2017 Financial Statements*, 3, <http://www.sao.texas.gov/reports/main/18-013.pdf>.

18 19 T.A.C. Sections 33.20 and 161.1003; 34 T.A.C. Section 63.17; Section 815.5091, Texas Government Code.

# ISSUE 2

## *Texas Has a Continuing Need for the School Land Board, but Changes to the Board's Structure and Contracting Processes Would Improve Operations.*

### Background

In 1939, the Legislature created the School Land Board (SLB) within the General Land Office (GLO) to supervise the management, leasing, and sale of the Permanent School Fund (PSF) lands.<sup>1</sup> SLB's goal is to manage PSF lands and investments related to these lands that generate revenue for the PSF, an endowment that helps fund public education in Texas. SLB is a three-member board composed of the commissioner of GLO and two citizen members, one appointed by the governor and the other by the attorney general.<sup>2</sup> Over time, the Legislature has increased SLB's authority to generate revenue for the PSF, allowing the board to buy real property and mineral interests on behalf of the PSF and to invest its portion of PSF funds in real estate, energy, and infrastructure. At the end of fiscal year 2017, the board's total portfolio was valued at approximately \$6.5 billion and the board distributed \$200 million during fiscal year 2017 to the State Board of Education for investments in the PSF.

### Findings

#### **Texas has a continuing need for SLB to oversee the sale and lease of public land and related investments that benefit the public school system.**

SLB has successfully maximized its portion of the PSF, increasing the funds from approximately \$1 billion to \$6.5 billion between 2001 to 2017. The board's functions should be continued to help ensure future growth of the fund, which contributes to Texas public school funding and supports the increasing student population in the state. Between school years 2006–2007 and 2016–2017, total public school enrollment in Texas increased by approximately 17 percent, the second highest growth rate in the nation after Utah.<sup>3</sup>

- **Lease and sale of PSF land.** SLB manages over 13 million acres of PSF lands by overseeing leases of properties for oil and gas development, including approving lease suspensions, lease extensions, pooling and unitization requests, various permits and easements, and real estate projects. All proceeds from PSF land sales and leasing are used to make new investments. In fiscal year 2017, SLB approved 186 mineral leases, 270 pooling agreements, 37 production sharing agreements, and 33 highway right-of-way pooling agreements. During the same year, SLB generated over \$50 million from land sales; approximately \$900 million from lease bonuses, royalties, and rental fees; and about \$630,000 from coastal land leases.

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*SLB has increased its portion of the PSF from about \$1 billion to \$6.5 billion.*

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- **Investments.** SLB makes investments through externally-managed investments worth approximately \$6.5 billion that invests in energy, real estate, and public infrastructure investments, and internally-managed real estate investments worth approximately \$290 million. The board is responsible for ensuring the investments are prudent and monitoring the performance of its portion of the PSF by reviewing quarterly investment reports and considering investment opportunities recommended to the board by the investment advisory committee. Ways to strengthen investment oversight duties are discussed in Issue 1 of this report.

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*The board follows the prudent investor standard.*

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### **The small size of the board limits communication among its members and ultimately its effectiveness.**

The three-member board structure presents certain challenges. Since two members constitute a quorum, an official meeting of the board occurs any time two members discuss SLB business. As a result, the board risks violating the Texas Open Meetings Act if two of the members discuss the agency's work without advance posting.<sup>4</sup> In fact, one member cannot even call another member to ask a question about basic board business. While no such conversations were observed and all board members are well aware of the issue, the three-member structure is quite limiting.

With only three board members responsible for the investment of millions of dollars each year, ensuring the members are fully informed and knowledgeable about these types of investments is critical. However, the small size of the board limits the members ability to do this. Other governing boards use subcommittees to allow board members to develop expertise on certain areas of the agency they govern. Developing this expertise helps the board members make better informed decisions in their important governance and oversight role.

One way to try to counteract these limitations is ensuring the individuals appointed to the board have some knowledge and experience relatable to SLB's operations and the decisions the board must make and vote on. Unfortunately, this poses another problem. Recusals of SLB board members occur frequently since board members with agency-related expertise such as knowledge and experience in land development and the oil and gas industry, oftentimes have conflicts of interest with an investment or agreement before the board, leaving only two board members to make important decisions.<sup>5</sup> In fiscal year 2017, an SLB member was absent, abstained, or recused himself from one third of all SLB votes.

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*Recusals of board members occur frequently.*

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### **Other states with lands dedicated to generating funds for public schools are overseen by land boards and land commissioners.**

Like Texas, 13 other states use state lands to generate income for public education and other state programs, such as higher education institutions.<sup>6</sup> In these other states, one or more land boards oversee the school trust lands. Texas is one of only three states with a three-member board. The other boards range in size from five to 12 members, with most having five to seven



members. Like SLB, these other land boards generate revenue by leasing or selling the land or its resources, including timber, minerals, oils, and natural gas production, and investing the revenue in financial instruments to provide ongoing funding to support beneficiaries.

**SLB's contracting processes do not fully align with best practices, contributing to inconsistencies in contract management.**

SLB uses contracted vendors for real estate, outside counsel, financial expertise and advice, petroleum engineering, geological evaluation, and other engineering services. In fiscal year 2017, SLB's contracted expenditures totaled about \$5.3 million. However, many of SLB's 75 contracts are multi-year and have a total value of about \$25 million. The table, *SLB Contract Expenditures*, provides information about the types of contracts SLB entered into and their associated costs in fiscal year 2017.

***SLB Contract Expenditures – FY 2017***

Type of Contract	Expenditures
Asset Management	\$4,140,133
Defense and Prosecution	\$1,068,777
Coastal and Uplands Leasing	\$74,849
Surveying and Appraisal	\$35,955
Energy Lease Management and Revenue Audit	\$5,331
<b>Total</b>	<b>\$5,325,045</b>

GLO staff perform all contracting functions for SLB, but the management of contracts is split between centralized procurement and contract staff and project managers that work in program areas. Procurement and contract staff perform the technical contract management functions and project managers in the energy resources, asset management, and investment divisions perform the monitoring functions for contracts, including the day-to-day interaction with vendors and monitoring of deliverables.

In 2015, the State Auditor's Office released a report describing significant weaknesses in GLO's contracting processes, including inadequate contract planning, procurement, formation, and monitoring, though the report did not specifically reference SLB contracts.<sup>7</sup> In response to the report, GLO created a centralized contract management division and adopted agency-wide contracting policies. Additionally, GLO created a contract management database designed to track each phase of a contract's lifecycle from procurement to close out. In fiscal year 2018, GLO began performing risk assessments on all newly executed contracts over \$25,000. As part of the new contract management database, this risk assessment tool assigns a score to every contract, which GLO uses to develop a quarterly monitoring plan, including the level of monitoring needed. For example, GLO staff may need to conduct file, fiscal, desk, or on-site reviews.

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*In 2015, the State Auditor's Office found significant weaknesses in GLO's contracting process.*

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When evaluating an agency's contracting operations, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset.<sup>8</sup> While GLO has made improvements to its procurement and contracting operations, the agency needs to ensure its improvements address the following issues related to SLB.

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*The board does not review, sign, or oversee any vendor services contracts.*

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- **No board approval of contracts.** Agencies should establish policies on contract approval. However, GLO's contract approval policy does not include information on the board's role in approving contracts or when staff will update the board on major contract changes. All SLB contracts are reviewed by GLO staff and signed by GLO's chief clerk. However, the board does not review, sign, or oversee any vendor services contracts related to SLB's functions even if the contract is multi-million dollars and spans several years. Clear approval authority helps eliminate any confusion over accountability and ultimate responsibility in contract administration. The board should provide oversight, accountability, and sign-off authority for high value vendor services contracts and approve contract extensions and contract amendment increases. Additionally, as a best practice, state law requires a governing body to approve significant contracts exceeding \$1 million or delegate the contract approval authority.<sup>9</sup>
- **Lack of consistent contract monitoring.** A board should carefully monitor contractor performance to ensure the agency gets what it pays for, that the contractor carries out required responsibilities, and that the agency identifies and resolves any problems quickly. Although SLB has not had significant problems with vendors, Sunset staff encountered inconsistent oversight procedures, and a lack of or conflicting monitoring and enforcement information related to SLB contracts as described below. SLB's lack of standard monitoring and enforcement procedures in the contracting process presents the potential for overspending, contract mismanagement, and a decline in the quality of vendor services.

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*GLO does not have clear and consistent contract monitoring policies and procedures.*

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Project manager policies. While GLO has a contract management handbook, closeout policy, and an acceptance of deliverables policy, it does not have clear policies outlining monitoring responsibilities and tasks for program staff. Project managers at the program level are responsible for managing contracts, but GLO has not developed policies or procedures on how programs and project managers should monitor contractors. Instead, GLO's contract management division requires SLB programs such as asset management, investments, and energy resources to adopt certain contracting policies and procedures, but the division has no way of knowing whether these policies have been adopted or if they include all the required elements, and the contract management division has no authority to enforce this requirement. For example, the division requires each program to develop a written policy that describes their processes for accepting deliverables, reviewing contractor documentation, and reviewing and approving vendor invoices. However, Sunset staff identified one program that has not adopted a policy and for those that have, the policies do not include or address all of the required elements and processes.

Reporting non-compliance. Agencies should centrally track and report information about the use of sanctions to management to help provide an overall picture of contract management issues and inform future contract solicitations. SLB does not have a consist way of documenting whether



vendors fulfilled contract requirements and reporting information about vendor issues and sanctions to the central contract management division and leadership. GLO staff reports that in the last five fiscal years, the agency has not taken formal action against any SLB contractors. Program staff have threatened to take action against contractors for not meeting contract requirements, but this information is not centrally tracked. Ensuring that SLB tracks all contractor nonperformance, whether contract termination or lesser penalties, and report that information to the central contract management division would help inform oversight of the board's contract management activities. This information would also be useful to identify or evaluate needed changes to a contract's scope or structure when contemplating contract amendments or a new solicitation for similar services.

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*GLO does not centrally track vendor performance.*

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- **Lack of comprehensive training.** An agency should provide consistent and comprehensive training to all staff responsible for contract management. GLO staff in the centralized contract management division must complete the comptroller's Certified Texas Contract Manager training, providing them with comprehensive knowledge and understanding about their roles and responsibilities. At the programmatic level, project managers received initial training on the more technical aspects of their monitoring responsibilities, including accessing the contract file, reporting vendor performance through the comptroller's website, and how to accept deliverables and review invoices.<sup>10</sup> However, GLO has not developed or provided further training specifically about the project managers' roles and responsibilities related to monitoring contractors, including developing risk assessments, reviewing expenditures, and conducting site visits.

### **SLB's statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed standard language that it applies across the board to all state agencies reviewed unless a strong reason exists not to do so. These provisions reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. These provisions also reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Board member training.** The board's statute does not specify the type of training and information board members need for them to properly discharge their duties. Additionally, statute does not require the agency to create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.
- **Policymaking and staff functions.** The board's statute does not provide for separating the policymaking functions of the board from the day-to-day administrative functions of the land commissioner and GLO staff.

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*Statute does not require a training manual for all board members.*

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*Statute does not require the board to maintain complete information on complaints.*

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- **Public involvement at board meetings.** Although SLB allows members of the public to appear and speak before the board, statute does not include this requirement. Specifically providing for public participation and input in law underscores its continuing importance as a source of additional information and perspective to improve the board's overall decision-making process.
- **Complaint information.** The board's statute does not require the agency to maintain complete information on complaints, though GLO has a complaint tracking process. Having this requirement in law would help maintain a system for acting on complaints and keeping proper documentation of complaints to ensure that problems will be addressed and in a timely fashion.

### **All but one of SLB's reporting requirements continue to be needed.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>11</sup> The Sunset Commission has interpreted these provisions as applying to reports required by law that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.

State law requires SLB to produce five reports as listed in the chart on the following page, *School Land Board Reporting Requirements*. One of these requirements is to prepare a report on the return and economic impact of PSF investments, which duplicates the *SLB Investment Funds Report* the board publishes three months earlier that contains the same investment information. Not only does the *SLB Investment Funds Report* contain the same information as the *Economic Impact of PSF Investments Report* but contains additional information about the health of the investment fund. Sunset staff analysis determined that the other four reports continue to provide useful information and should be continued.

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*SLB's report on the economic impact of PSF investments duplicates another report.*

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### **The board should continue to implement state cybersecurity requirements and industry best practices.**

The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>12</sup> The assessment of SLB's cybersecurity practices focused on identifying whether GLO complied with state requirements and industry cybersecurity best practices regarding the board's functions and responsibilities. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the board's technical infrastructure. Sunset staff found no significant issues relating to the board's cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the board.

### ***School Land Board Reporting Requirements***

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
1. PSF Land Trade Report	Section 32.258, Texas Natural Resources Code	Recent PSF land trades and justification for the trade.	Legislature	Continue
2. Land Sold Below or Above Appraised Value Report	Section 51.011 (a-2), Texas Natural Resources Code	Sale of any PSF land for less than appraised value or purchase of PSF for more than appraised.	Legislative Budget Board	Continue
3. SLB Investment Funds Report	Section 51.412(a), Texas Natural Resources Code	Direct and indirect economic impact of the investment funds.	Legislature	Continue
4. Economic Impact of PSF Investments Report	Section 51.412(b), Texas Natural Resources Code	Return and economic impact of PSF investments.	Legislature	Eliminate
5. Report on Anticipated Transfer of Funds	Section 51.4131, Texas Natural Resources Code	Amount of money SLB will transfer from the real estate special fund account of the PSF to the available school fund or the State Board of Education.	Legislature, Comptroller, State Board of Education, Legislative Budget Board	Continue

## **Recommendations**

### ***Change in Statute***

#### **2.1 Continue the School Land Board for 12 years.**

This recommendation would continue SLB until September 1, 2031, the standard 12-year period.

#### **2.2 Expand the board from three to five members.**

This recommendation would add two additional public members to the board, one appointed by the governor and one appointed by the attorney general. Altogether, the governor and attorney general would both appoint two board members to SLB, instead of one each. Three members would then constitute a quorum. The land commissioner would remain as chair, and the existing public board members would continue to serve two year terms and be appointed in September of odd number years. The new members would serve two-year terms and be appointed by September 1, 2020 to stagger with the terms of the existing public members. With more members, the board should consider creating subcommittees to help oversee SLB's investments, procurement practices, and other areas needing greater oversight.

#### **2.3 Apply the standard across-the-board requirement related to board member training.**

This recommendation would require GLO to provide training to SLB board members, and would clearly establish the type of information to be included in the training. The training would need to provide board members with information regarding the legislation that created the board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics

policies. This recommendation would also require the agency to develop a training manual that each SLB member attests to receiving annually, and require the board member training to include information about the scope of and limitations on the board's rulemaking authority, as well as information on the board's responsibilities related to contract management. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

#### **2.4 Apply the standard across-the-board requirement related to separation of duties.**

This recommendation would require the board to develop and implement policies that clearly separate its policymaking role and responsibilities from the management responsibilities of the land commissioner and GLO staff.

#### **2.5 Apply the standard across-the-board requirement related to public testimony.**

This provision ensures the opportunity for public input to SLB on issues under its jurisdiction.

#### **2.6 Apply the standard across-the-board requirement related to complaints.**

This recommendation would require the board to maintain a system for acting on complaints, and that the board make information available regarding its complaint procedures. The board must also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints. GLO could use their existing complaint system to track and evaluate SLB complaints.

#### **2.7 Eliminate the duplicative economic impact of PSF investments reporting requirement, and continue SLB's four other required reports.**

This recommendation would eliminate the board's *Economic Impact of PSF Investments Report* since this information is duplicative of information provided in the *SLB Investment Funds Report*, which the board publishes three months earlier. This recommendation would also continue the board's four other reports, including the *PSF Land Trade Report*, *Land Sold Below or Above Appraised Value Report*, *SLB Investment Funds Report*, and *Report on Anticipated Transfer of Funds*.

### **Management Action**

#### **2.8 Direct SLB to review and approve large contracts.**

Under this recommendation, SLB would adopt a policy establishing criteria for and levels of review and approval of all vendor services contracts, including monetary threshold above which board approval is required for contract execution. The policy would also include when staff should report to the board on significant contract amendments and changes, including their impact. Having this policy and board approval of the agency's most significant contracts would improve the board's oversight of contracting functions. The board should adopt this policy by December 1, 2019.

#### **2.9 Direct SLB to develop, adopt, and implement clear contract monitoring policies and include them in the contract manual and training.**

Under this recommendation, SLB should set clear contract monitoring expectations for project managers at the program level and adopt policies and guidelines to help ensure contractors are fulfilling the terms of their contract. At a minimum, these policies should clearly distinguish between the different roles and responsibilities of the contract manager and project manager, and explain how to effectively monitor contractors, including monitoring and contract outcomes.

This recommendation would also direct GLO to develop a centralized method for tracking contract monitoring and enforcement by the project managers, including any sanction activities such as withholding payments and requiring the contractor to complete corrective action plans. GLO staff would work to develop a clear process for identifying and reporting compliance issues to appropriate staff including procedures to maintain a record of these issues from initial identification to final resolution. This information should be available and accessible to both SLB program staff and GLO contract management staff through GLO's new contract management system. The agency should develop and implement these policies, procedures, and process by December 1, 2019.

### **2.10 Direct GLO to develop a training policy and provide contract management training for project managers and other staff involved in the contracting process.**

Under this recommendation, GLO would develop a policy establishing training requirements for all staff involved in managing and monitoring contracts, including project managers and executive management. GLO's contract staff would develop new contracting monitoring training based on the policies in Recommendation 2.9 and ensure all staff involved in the day-to-day management of contracts, including SLB contracts, receive the training. The board should adopt the contract training policy by December 1, 2019.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state. Expanding the board would result in additional travel expenses for two new members. The agency should use its existing administrative resources to pay the estimated \$2,840 per year in travel expenses for the new board members. The other recommendations to strengthen and improve SLB's contract management and board oversight would not have a fiscal impact since the agency already employs staff that manage contracts in GLO's central office and at the program level. Improved oversight of contracting costs and enhanced contract management should result in some savings to the board; however, projections of savings cannot be estimated.

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- <sup>1</sup> S.B. 167, 46th Texas Legislature, Regular Session, 1939.
  - <sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 32.012, Texas Natural Resources Code.
  - <sup>3</sup> Texas Education Agency, *Enrollment in Texas Public Schools 2016–2017*, accessed on June 25, 2018, [https://tea.texas.gov/acctres/enroll\\_2016-17.pdf](https://tea.texas.gov/acctres/enroll_2016-17.pdf).
  - <sup>4</sup> Section 551.001(4)(A), Texas Government Code.
  - <sup>5</sup> Section 572.051, Texas Government Code.
  - <sup>6</sup> “About,” Western States Land Commissioners Association, accessed on June 18, 2018, <http://www.glo.texas.gov/wslca/index.html>.
  - <sup>7</sup> State Auditor’s Office, *An Audit Report on Contract and Financial Management Processes at the General Land Office*, accessed June 19, 2018, <http://www.sao.texas.gov/reports/main/15-037.pdf>.
  - <sup>8</sup> Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, Accessed June 23, 2018, <https://comptroller.texas.gov/purchasing/docs/96-1809.pdf>.
  - <sup>9</sup> Section 2261.254 (c)(1), Texas Government Code.
  - <sup>10</sup> State Auditor’s Office, *An Audit Report on Contract and Financial Management Processes at the General Land Office*, accessed June 19, 2018, <http://www.sao.texas.gov/reports/main/15-037.pdf>.
  - <sup>11</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.
  - <sup>12</sup> Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

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**VETERANS' LAND BOARD  
AT A GLANCE  
JULY 2018**





# VETERANS' LAND BOARD AT A GLANCE

Texas voters established the Veterans' Land Board (VLB) through a constitutional amendment in 1946 to honor Texas veterans and their families. Housed within the Texas General Land Office (GLO), the board provides benefits and services for qualified Texas veterans, military members, and their families, including

- low-interest loans to purchase land and homes, and to fund home improvements;
- long-term skilled nursing home care at eight state veterans homes with a ninth home opening in early 2019;
- burial and interment services at four state veterans cemeteries; and
- benefit information and assistance services through the Texas Veterans Communications Call Service Center and other marketing and outreach initiatives.

Federal and state law define a veteran as any person who served in the active military, naval, or air service of the United States and who was discharged or released under conditions other than dishonorable.

Source: Section 302.151, Texas Labor Code citing 38 U.S.C. Section 101(2)

## Key Facts

- **Governance.** A constitutionally created three-member board governs VLB. The Texas Constitution establishes that the land commissioner serves as the chairman of VLB, and the governor appoints two citizen members — one with experience in veterans issues and one with experience in finance — to serve four-year terms. The chief clerk of GLO may act as the chairman in the absence of the commissioner. The chart, *Veterans' Land Board*, shows the board's current make up. The board establishes policies and adopts rules governing the agency's programs; authorizes bond sales and oversees the use of bond and investment funds; and sets the interest rates for the agency's loan programs. All VLB functions not required to be performed by the board are delegated to the land commissioner.<sup>1</sup>

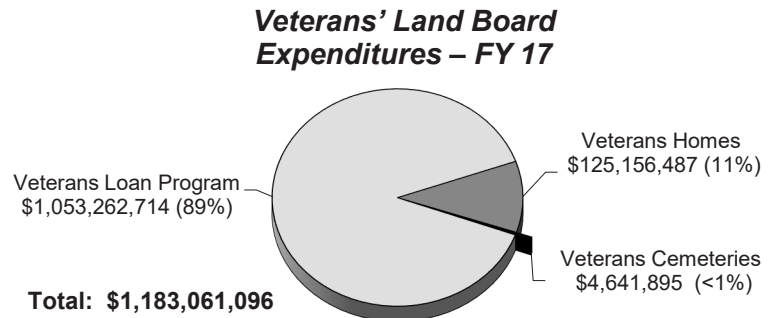
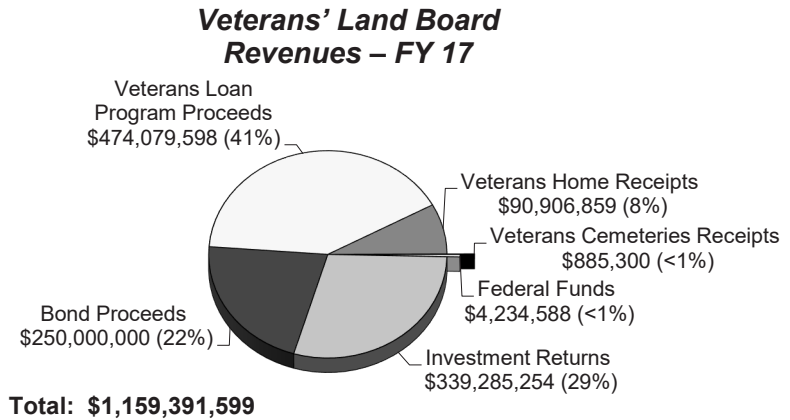
### *Veterans' Land Board*

Name	Term	Qualification	City
The Honorable George P. Bush, Chairman	January 2015–present (ex officio)	Land Commissioner	Austin
Andrew J. Cobos	May 2015–December 2018	Veterans Advocate	Harlingen
Grant Moody	July 2017–December 2020	Finance/Banking	San Antonio

- **Staffing.** In fiscal year 2017, the agency employed 113 staff, including one on-site representative located at each of the eight state veterans homes and each of the four veterans cemeteries. The Legislature does not allocate specific full-time equivalent positions to VLB as all staff are GLO employees. The Senior Deputy Director of Veteran Programs manages VLB's day-to-day operations and serves as the executive secretary of the board. GLO staff manage VLB operations by providing administrative support, including financial and budget management, appraisal and survey, information system,

internal audit, legal, and other services. Appendix B compares the agency’s workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years.

- Funding.** VLB does not receive any general revenue funds and is completely funded from investment income, loan repayment proceeds, and federal funds. In fiscal year 2017, VLB’s revenue totaled approximately \$1.2 billion, primarily from loan repayments and investment earnings associated with VLB-issued bonds, federal grant funds for the state veterans homes and cemeteries, and interagency contracts for the administration of the state veterans call center. The pie charts, *Veterans’ Land Board Revenues* and *Veterans’ Land Board Expenditures*, illustrate the board’s finances and expenditures for fiscal year 2017. Appendix C describes the agency’s use of historically underutilized businesses in purchasing goods and services for fiscal years 2016–2017.



Loan program bond funds are at the heart of VLB’s financial structure, and directly support the veterans cemeteries program and VLB’s administration fund, including indirect costs for GLO services as shown in the table, *VLB Indirect Costs*. VLB’s veterans homes are self-funding and use income from investments within the veterans homes program and other revenue, including payments from the federal Veterans Administration (VA), Medicare and Medicaid, resident payments, and private donations, provide funding to state veterans homes. VLB’s cemetery program also receives funding from the VA and excess assets within its land and home loan programs.

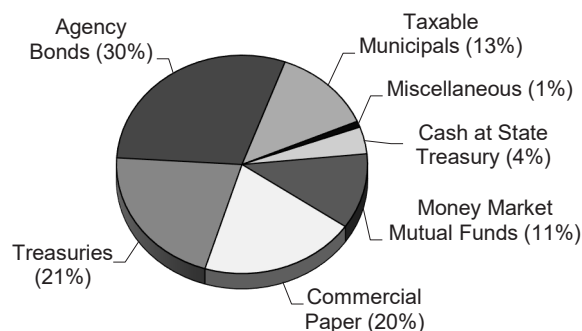
- Investments.** VLB has constitutional authority to issue bonds to fund the veterans land, housing assistance, and home improvement loan programs.<sup>2</sup> The agency also has authority to use excess assets that

**VLB Indirect Costs**

GLO Service	VLB Expenditure
Information Services	\$2,966,798
Financial Management	\$1,861,797
Appraisal Services	\$984,981
Office of Communications	\$604,632
Executive	\$604,272
Internal Audit	\$601,305
Office of General Counsel	\$511,531
Governmental Relations	\$361,695
Human Resources	\$138,484
Office of Compliance	\$103,696
Contract Management	\$77,773
Ombudsman	\$36,365
Unemployment Benefits/Workers	\$30,587
<b>Total</b>	<b>\$8,883,916</b>

are not needed for the purpose of the loan programs to fund the veterans homes and cemeteries.<sup>3</sup> GLO's investment staff manages the bond issuances approved by VLB.<sup>4</sup> The largest category of investment assets VLB purchases are bonds issued by federal agencies such as Fannie Mae and Freddie Mac. These bonds account for about 30 percent of the board's total investments. VLB also invests in municipal bonds, commercial paper, U.S. Treasury bonds, and money market funds. The pie chart, *VLB Portfolio Asset Allocation*, illustrates the portfolio's asset allocation position at the end of 2017. The board does not invest in stocks and high-risk investments such as derivatives or alternative investments. At the end of 2017, the value of VLB's portfolio totaled over \$1.1 billion. The rate of return on investments in 2017 was 2.16 percent and averaged 1.58 percent over the last five years, both of which suppressed the board's internal benchmarks.

**VLB Portfolio Asset Allocation  
as of December 31, 2017**



- Veterans loan programs.** VLB offers qualifying veterans, military members, and their spouses loans to purchase land, buy or build homes, or make home improvements. These loans typically offer below-market mortgage rates. In fiscal year 2017, VLB funded more than 2,000 loans totaling about \$207 million through these programs, as described in the table, *VLB Loan Programs*.

**VLB Loan Programs**

Loan Program	Program Description	VLB Interest Rate (fixed)*	Number of Loans FY 17	Amount Funded FY 17
Veterans Land Loan Program	Allows veterans to borrow up to \$150,000 to purchase land with a minimum of 5 percent down and a fixed-rate 30-year loan term.	7.25%	1,260	\$91,899,740
Veterans Housing Assistance Program	Provides up to \$424,100 on a fixed-rate loan for a 15- or 30-year term toward the purchase of a home with little to no down payment. Veterans with a VA service-connected disability rating of 30 percent or greater qualify for discounted interest rate.	base rate: 4.35% discounted rate: 3.85%	396	\$103,466,954
Veterans Home Improvement Loan Program	Provides below-market interest rate loans of up to \$50,000 for a 20-year loan or up to \$10,000 for a 10-year loan for home repairs and improvements to veterans' existing homes. Veterans with a VA service-connected disability rating of 30 percent or greater qualify for discounted interest rate.	base rate: 4.35% discounted rate: 3.85%	401	\$11,556,301
<b>Total</b>			<b>2,057</b>	<b>\$206,922,993</b>

\* Interest rates included in this chart are as of June 13, 2018 but change frequently.

The veterans land loan program is the only state-sponsored program of its kind in the United States offering financing for land loans, though several other states offer veterans home loan assistance and home improvement loans. The textbox, *Eligibility Requirements for VLB Loan Programs*, describes program eligibility guidelines in detail. VLB can typically offer veterans below market interest rates using tax-exempt bond proceeds or by subsidizing rates with investment earnings and loan repayments. The bonds issued to fund the loan programs are redeemed over time from loan repayments and investment earnings, and a small fee on each loan helps offset the cost of administering the loan programs.

- **Texas State Veterans Homes.** VLB provides affordable, long-term skilled nursing care for over 1,000 Texas veterans, their spouses, and parents whose children have been killed in military service in eight veterans nursing homes across Texas.<sup>5</sup> Each home can accommodate between 100 and 160 residents. A ninth home is scheduled to open in Houston in the summer of 2019. The map, *Texas State Veterans Home Locations and Occupancy Rates*, displays where VLB veterans homes are located and their occupancy rates as of April 30, 2018. VLB partners with the VA to build the homes, with the VA paying up to 65 percent of construction costs and VLB paying the remainder. All the veterans homes are built on donated land.

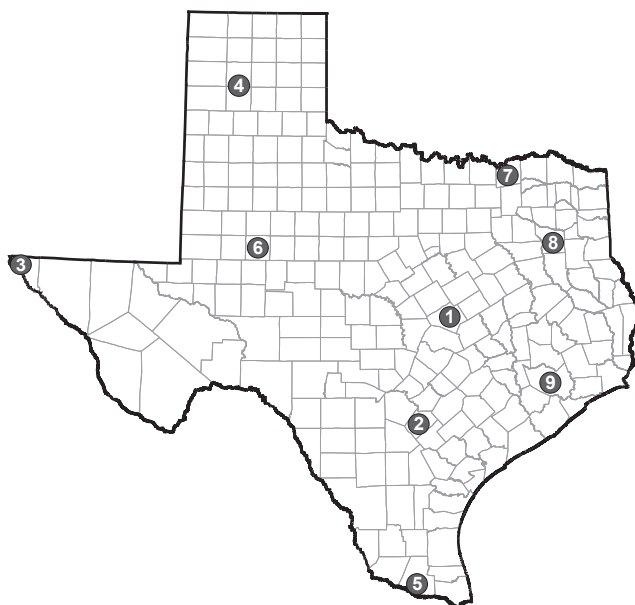
**Eligibility Requirements for VLB Loan Programs**

Veterans, military members, and their spouses must be at least 18 years of age and a legal resident of Texas on the date of application and meet one of the following service criteria:

- An active duty military member
- A member of the Texas National Guard
- A reserve component military member having completed 20 qualifying years for retirement
- A veteran having served at least 90 active duty days unless discharged sooner due to a service connected disability and not discharged dishonorably
- A surviving spouse of a veteran listed as missing in action or whose death was service-connected

*A borrower may have one active loan in each program at the same time and may use each program multiple times.*

**Texas State Veterans Home Locations and Occupancy Rates as of April 30, 2018**



1. Temple – William R. Courtney Texas State Veterans Home — 97.5%
2. Floresville – Frank M. Tejada Texas State Veterans Home — 98.75%
3. El Paso – Ambrosio Guillen Texas State Veterans Home — 96.88%
4. Amarillo – Ussery-Roan Texas State Veterans Home — 97.5%
5. McAllen – Alfredo Gonzalez Texas State Veterans Home — 97.5%
6. Big Spring – Lamun-Lusk-Sanchez Texas State Veterans Home — 76.25%
7. Bonham – Clyde W. Cospers Texas State Veterans Home — 97.5%
8. Tyler – Watkins-Logan-Garrison Texas State Veterans Home — 96%
9. Houston – Richard A. Anderson Texas State Veterans Home (*Scheduled to open summer 2019*) — N/A

The VA subsidizes a resident's cost depending on their VA service and disability rating; residents can also use Medicare and Medicaid for these costs. The unsubsidized VLB rate for a semi-private or private room is currently \$147 and \$200 per day, respectively, with the exception of the Tyler home, where the daily rate is \$244 because of that home's "small house" model where all the rooms are private. The other state veterans homes are modeled after standard long-term skilled nursing facilities.

VLB owns the homes and contracts with professional private nursing home operators who run the homes. Each veterans home also has a specialized memory care unit and programming targeted to the unique needs of veterans. The veterans homes are subject to oversight and compliance reviews by the VA, the Texas Health and Human Services Commission, and the Centers for Medicare & Medicaid Services. GLO employs an on-site representative at each location who monitors the nursing home operator and serves as a liaison between GLO, VLB, residents, and the operator.

- **Texas State Veterans Cemeteries.** VLB, in partnership with the VA, operates and maintains four state veterans cemeteries in Killeen, Abilene, Mission, and Corpus Christi. Veterans, including all members of the armed forces and certain reserve component members, their spouses, and eligible dependents can be interred at no cost to them. The VA provides annual grant funding to cover all burial costs for veterans. In 2015, VLB voted to waive the fee charged to spouses and dependents for burial and subsidizes these costs through the board's investment proceeds. The state veterans cemeteries have the capacity to provide a resting place for over 140,000 veterans and their families. As of April, 2018, over 15,000 people have been interred in the state veterans cemeteries. GLO contracts for the management and operations of the cemeteries, at an annual cost of approximately \$3 million. An on-site GLO employee serves as a VLB representative at each cemetery to monitor operations and act as a liaison between GLO, VLB, veterans and families, the contractor, and local community. In addition to VLB's management and oversight, state veterans cemeteries are subject to compliance review by the VA.
- **Marketing and outreach.** VLB's marketing and outreach program educates Texas veterans about the VLB loan, veterans homes, and veterans cemeteries programs. The program has a staff of 16 who travel across the state to represent the agency at veterans benefit fairs and other community events in increase awareness of VLB programs. The marketing and outreach team develops brochures and other promotional materials, maintains social media accounts, produces a podcast, and records veterans stories for its oral history program. VLB also operates a statewide call service center in collaboration with the Texas Veterans Commission to answer questions about and connect veterans to all available veterans services. The call center handles an average of over 3,000 calls per month.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 161.062, Texas Natural Resources Code.

<sup>2</sup> Section 49-b (c), Article III, Texas Constitution.

<sup>3</sup> Section 164.003, Texas Natural Resources Code.

<sup>4</sup> Section 161.061, Texas Natural Resources Code.

<sup>5</sup> T.A.C. Section 176.7(3); 38 C.F.R. Section 51.210(d).



— **VETERANS' LAND BOARD ISSUES**





# ISSUE 1

## *VLB Needs to Make Additional Improvements to Ensure Its Contracts Adhere to Best Practices.*

### Background

As the administrative agency for the Veterans' Land Board (VLB), the General Land Office (GLO) issues contracts on behalf of the board for VLB's state veterans homes program, state veterans cemeteries program, and the veterans loan programs, including advertising and marketing the programs. In fiscal year 2017, GLO administered and VLB managed 71 contracts valued at over \$95 million, as shown in the table, *VLB Contracts by Program*.

***VLB Contracts by Program***

<b>Program</b>	<b>Total Contracts</b>	<b>Total Amount</b>
State Veterans Homes	21	\$87,202,687
State Veterans Cemeteries	9	\$4,104,648
Veterans Loan Programs and Marketing and Outreach	41	\$3,933,066
<b>Total</b>	<b>71</b>	<b>\$95,240,401</b>

In 2015, the State Auditor's Office released a report describing significant weaknesses in GLO contracting processes, including inadequate contract planning, procurement, formation, and monitoring, though the report did not specifically reference VLB contracts.<sup>1</sup> In response to the report, GLO created a centralized contract management division and adopted agency-wide contracting policies. Additionally, GLO uses a contract management database designed to track each phase of a contract's lifecycle from procurement to close out. In fiscal year 2018, GLO began performing risk assessments on all newly executed contracts over \$25,000. As part of the new contract management database, this risk assessment tool assigns a score to every contract, which GLO uses to develop a quarterly monitoring plan, including the level of monitoring needed. For example, GLO staff may need to conduct file, fiscal, desk, or on-site reviews.

GLO and VLB created a contract management system that separates technical contract management functions from project management monitoring functions, including day-to-day interaction with vendors. Project managers are responsible for ensuring deliverables are met and monitoring overall compliance so vendors can be properly evaluated by GLO procurement and contract management divisions for future selection. The table on the following page, *Select VLB Contracts*, shows the board's largest contracts in each VLB program and their contracted expenditures in fiscal year 2017.

**Select VLB Contracts**

<b>Contracted Service</b>	<b>Vendor</b>	<b>FY 17 Expenditure</b>
<b>Veterans Loan Programs/Marketing and Outreach</b>		
Mortgage Loan Servicing	Dovenmuehle Mortgage, Inc.	\$1,515,849
Marketing and Advertising	Sherry Matthews Advertising	\$1,165,493
Investment Banking Services	George K. Baum & Company	\$405,866
<b>Veterans Homes</b>		
Veterans Home Operations	Touchstone Veterans Management, LTD.	\$31,705,170
Veterans Home Operations	Care Inns of Texas, LTD.	\$28,711,277
Veterans Home Operations	Texas VSI, LLC.	\$19,093,395
<b>Veterans Cemeteries</b>		
Cemetery Operations	Premier Cemetery Service Corporation	\$3,297,913
Construction	Buzz Services, LLC.	\$276,021
Construction Engineering	Pape-Dawson Consulting Engineers, Inc.	\$118,029
<b>Total</b>		<b>\$86,289,013</b>

**Finding****VLB's contracting processes do not fully align with best practices, contributing to inconsistencies in contract management.**

When evaluating an agency's contracting operations, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset. While VLB's contracting functions are shared with GLO, the board can ensure improvements to its processes by addressing the following issues.

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*Project managers lack detailed contract monitoring training.*

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- **Lack of contract monitoring training.** VLB staff who serve as project managers for contracts are experts in their respective fields, but lack contract management and monitoring training, which can make enforcement of contract deliverables difficult. GLO has worked to create standard contract policies and procedures and created an online database to track contract information. Additionally, GLO requires the contract managers in its contract management division to complete training from the state comptroller's office to learn how to identify, document, and report vendor issues among other things. However, no such training requirement exists for VLB project managers.<sup>2</sup> While GLO provides some basic contract monitoring guidance to project managers, such as how to accept deliverables and close out a contract, the agency needs to develop additional training to further define how project managers should monitor contractors, including developing risk assessments, reviewing expenditures and vendor reports, and conducting site visits. Requiring additional project management training

for VLB staff would help reduce the potential risk of inconsistent project management, contract mismanagement, and reduction in the quality of vendor services, and help ensure any vendor issues are fully documented and appropriately reported.

- **Inconsistent contract monitoring.** VLB does not have adequate contract oversight procedures in place that provide consistent monitoring and enforcement of vendors to quickly identify and resolve problems. Although VLB has not had significant problems with most vendors and is trying to implement centralized contract monitoring, Sunset staff encountered multiple inconsistent oversight procedures during the review.

Contract monitoring policies. Several GLO and VLB staff are involved in contract management as demonstrated in the *Who Oversees VLB Contracts?* textbox. GLO's contract and procurement staff help VLB develop procurement language for soliciting contract bids and GLO's procurement division oversees the review and evaluation of submitted bids. Upon a contract's execution, VLB designates a program staff member to serve as the contract's project manager and be responsible for the day-to-day project management. This separation helps ensure objectivity in correcting problems and deficiencies.

However, VLB has not developed clearly defined roles and responsibilities for staff who monitor VLB contracts or consistent contract monitoring policies and procedures. At the programmatic level, VLB project managers and program staff manage the contracts on a day-to-day basis. While VLB has taken steps toward developing policies for reviewing documentation and accepting deliverables from vendors, these policies are inconsistent among the different program areas and contain only general information related to contract monitoring.

The *State of Texas Procurement and Contract Management Guide* requires agencies to inspect and approve products and services by submitting a written document specifically accepting the deliverables.<sup>3</sup> VLB has created its own acceptance of deliverables policy, designed to ensure that contractors are in compliance with their contractual obligations and to identify the process of acceptance of deliverables for all contracts and payments. However, this policy offers limited guidance about the responsibilities of program staff confronted with issues and in many cases, indicates that a number of different program staff may perform monitoring activities rather than a single point of contact.

#### **Who Oversees VLB Contracts?**

- **GLO procurement division:** Helps VLB program staff decide if the need exists to hire a vendor and works with VLB program staff to develop and evaluate a solicitation.
- **GLO contract management division:** Works with GLO procurement in the development of the procurement process and supports VLB program staff with top-level contract oversight, record keeping, and close out.
- **GLO office of general counsel:** Assists all divisions, including VLB, with developing and approving contract language, negotiating contract specifics, and providing support with issues of non-compliance.
- **VLB program compliance manager:** Operations staff person that oversees veterans loan and cemetery contracts.
- **Veterans homes administration manager:** Program staff person that oversees veterans homes contracts and supports other program staff, including those in the field.
- **Project managers:** VLB program staff assigned to certain contracts that work directly with vendors on a daily basis to ensure deliverables are met and monitor compliance. Other VLB program staff also assist project managers with monitoring programs.

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*VLB does not have consistent policies for identifying and tracking contract compliance issues.*

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Tracking and reporting compliance issues. Agencies should centrally track and report information about the use of sanctions to management to help provide an overall picture of contract management issues and to inform future contract solicitations. Instead, VLB staff keep documentation of vendor performance issues at the program level and limited procedures exist on centralized tracking and reporting of vendor performance issues to senior staff and GLO's central procurement and contract management staff.

While VLB staff may choose to involve GLO's general counsel or contract monitoring staff in compliance issues during the life of the contract, they are only required to evaluate vendor performance during contract close-out using GLO's online contract management system and only contract terminations require a review by GLO's general counsel staff. Without clear direction or formalized policies, each VLB program develops its own method of contract monitoring. For example, the veterans homes program created a detailed contract monitoring tool to evaluate home operators, and the veterans cemeteries program maintains an extensive daily reporting system for cemetery operations. While staff submits reports to VLB leadership, no consistent policies for use of these reports exist.

VLB can take action against poorly performing contractors, including withholding or deducting payments, and suspending or terminating contracts, but this information is not centrally tracked or reported. GLO contract and procurement staff indicate that in the last five fiscal years, the agency has not taken action against a contractor for non-compliance and does not track proposed sanctions when in fact, VLB staff has made demands, threatened to seek liquidated damages, and taken steps to terminate contracts held by under-performing vendors. However, documentation of these actions is only maintained at the program level and not readily accessible to GLO's contract and procurement staff. Ensuring VLB centrally tracks and reports all contractor nonperformance, including contract termination, withholding payments, corrective action plans, or even the threat of sanctions, would help inform oversight of the agency's contract management activities. This information would also be useful to identify or evaluate needed changes to a contract's scope or structure when contemplating contract amendments or a new solicitation for similar services.

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*The board does not review or approve any program contracts.*

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- **No board review.** Agencies should establish clear policies on contract oversight and approval. GLO staff review all VLB contracts, but VLB does not have a contract review or approval policy for its board. Clear approval authority helps eliminate any confusion over accountability and ultimate responsibility in contract administration. The need for accountability and high-level review and approval authority should increase as the dollar value of the contract, contract extension, or contract amendment increases. Additionally, most state agencies' governing bodies approve contracts exceeding \$1 million.<sup>4</sup> Given the size and scope of VLB contracts, VLB board members should review contracts over \$1 million when they are first awarded, significantly amended, or renewed to ensure accountability for decisions with multi-million dollar implications.

## Recommendations

### *Management Action*

#### **1.1 Direct VLB and GLO staff to work together to develop and require regular training for staff involved in the VLB contracting process to effectively monitor contracts.**

This recommendation would direct VLB to work with GLO to identify or develop additional training for program staff that perform project management monitoring functions and require this training at regular intervals. This training could include, but should not be limited to, information related to monitoring performance, collecting and sharing performance data with appropriate VLB and GLO divisions, and identifying and reporting compliance issues. The board should develop and implement the new training by December 1, 2019.

#### **1.2 Direct VLB to work with GLO to further develop written policies outlining clear authority over the board's contracting functions, including the roles of project management and other program staff.**

This recommendation would direct VLB staff to work with GLO contract management staff to develop thorough, written policies delineating the various roles of GLO and VLB staff involved in the contract management process. These policies should clearly outline the differences between the contract manager and project manager roles and responsibilities, as well as the responsibilities of program staff performing project management oversight and compliance monitoring as well as those of program staff that support project managers. These policies should build on VLB's existing acceptance of deliverables policy and include more detailed information on how to effectively monitor contractors and document outcomes. The board should develop and implement these policies by December 1, 2019.

#### **1.3 Direct VLB and GLO to develop a framework for program staff to identify significant contract compliance issues and a clear process for requiring the reporting and documenting these issues for review.**

This recommendation would direct VLB to work with GLO to develop a clear process for identifying and reporting compliance issues to appropriate staff including procedures to maintain a record of these issues initial identification to final resolution. This information should be available and accessible to both VLB and GLO contract management staff through GLO's new contract management system. The board should develop and implement procedures by December 1, 2019.

#### **1.4 Direct VLB to review large contracts.**

Under this recommendation, VLB would develop and adopt written policies establishing criteria for the levels of contract review, including a monetary threshold of at least \$1 million that requires board review. The policy should also include when staff should report to the board on the impact of contract amendments on larger contracts. The board should adopt these policies by December 1, 2019.

## Fiscal Implication

These recommendations are designed to improve the efficiency of the contract monitoring processes at VLB but would not have a fiscal impact to the state because the board has staff to oversee contract management who would work to implement these recommendations within the scope of their regular duties. Additionally, VLB staff can use GLO's existing contract management division and resources for support, including using the features of GLO's new contract management database to help establish guidelines and related training materials.

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<sup>1</sup> State Auditor's Office, *An Audit Report on Contract and Financial Management Processes at the General Land Office*, accessed June 19, 2018, <http://www.sao.texas.gov/reports/main/15-037.pdf>.

<sup>2</sup> State Comptroller's Office, *Contract Manager Training and Certification*, accessed June 19, 2018, <http://www.window.state.tx.us/procurement/prog/training-cert/cmt/>.

<sup>3</sup> State Comptroller's Office, *State of Texas Procurement and Contract Management Guide*, accessed June 19, 2018, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.

<sup>4</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2261.254(c)(1), Texas Government Code.



# ISSUE 2

## *The Veterans' Land Board's Statute Does Not Reflect Some Standard Elements of Sunset Review and Others Have Not Been Implemented.*

### Background

Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to conform Veterans' Land Board's (VLB) statutes to standard Sunset language generally applied to all state agencies, address the need for the board's required reports, and update statute to reflect the state's person-first respectful language initiative. Sunset staff also performed a newly required assessment of cybersecurity practices.

- **Sunset across-the-board provisions.** The Sunset Commission has developed standard language that it applies across the board to all state agencies reviewed unless a strong reason exists not to do so. These provisions reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. These provisions also reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Reporting requirements.** The Texas Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>1</sup> The Sunset Commission has interpreted these provisions as applying to reports required by law that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.
- **Cybersecurity.** The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>2</sup> The assessment of VLB's cybersecurity practices focused on identifying whether the General Land Office (GLO) complied with state requirements and industry cybersecurity best practices regarding the board's functions and responsibilities. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the GLO's technical infrastructure.

### Findings

**VLB's statute does not reflect updated requirements for board member training and separation of board and staff functions, and VLB has not fully implemented requirements for public input and complaint information.**

- **Board member training.** The board's statute contains standard language requiring board members to receive training and information necessary

for them to properly discharge their duties.<sup>3</sup> However, statute does not contain a newer requirement that the agency create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.

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*The board does not have a policy to ensure public input.*

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- **Policymaking and staff functions.** The board's statute does not provide for separating the policymaking functions of the board from the day-to-day administrative functions of the land commissioner, VLB staff, and GLO staff.
- **Public involvement at board meetings.** VLB's statute currently includes a provision that requires the board to provide the public a reasonable opportunity to appear before and speak on any issue under the board's jurisdiction.<sup>4</sup> However, VLB has not developed or implemented a public input policy and does not specifically allot time for public comment at its board meetings. Additionally, information related to the board and board meetings is only posted on the GLO website, not VLB's website, which could limit public involvement and knowledge about the board.<sup>5</sup> Allowing for public involvement could provide the board with a source of additional information and perspective to better inform decisions and help identify stakeholder concerns.
- **Complaint information.** VLB's statute currently includes a provision relating to maintaining adequate information about complaints received, but staff does not centrally track all complaints related to VLB.<sup>6</sup> For example, each state veterans home maintains handwritten resident and family complaints on-site, but these are not transmitted to VLB's central office. These complaints are also not included in GLO's complaint log, which showed only one complaint related to veterans homes in 2017. The U.S. Department of Veterans Affairs and Texas Health and Human Services on behalf of the Centers for Medicare and Medicaid Services also oversee and provided some oversight to the veterans homes, in addition to VLB and GLO. While VLB is not responsible for investigating or resolving these complaints, having and tracking this information would be useful in overseeing and managing the performance of the contractors and to have a full picture of contractor and home performance.

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*VLB does not centrally track complaints related to its programs.*

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Additionally, the VLB website does not include information on how to file a complaint or a link to GLO's online complaint form.<sup>7</sup> Veterans and their families receiving services should be able to file a written complaint against a VLB staff member, facility, or contracted vendor, and the board should clearly communicate the process on its website to promote awareness.

### **The reporting requirement regarding VLB loan performance continues to be needed.**

Statute requires VLB to produce an annual report regarding the performance of its veterans loan programs as shown in the chart on the following page, *Veterans' Land Board Reporting Requirement*. Although required since 1991,



### **Veterans' Land Board Reporting Requirement**

<b>Report</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
Performance of VLB Loans	Sections 161.2111 and 162.003(e), Texas Natural Resources Code	A report on the performance of VLB loans funded with bonds.	Bond Review Board	Continue

VLB indicates it has not produced or submitted this as a stand-alone report because the Bond Review Board never adopted rules to prescribe the filing dates or report content. However, other agencies such as the Texas Water Development Board produce and submit similar reports to the Bond Review Board that include information about the number of loans in the agencies' portfolios and delinquency and foreclosure rates.

VLB has and provides much of the same loan performance information in its annual bond issuance application it files with the Bond Review Board and in its annual continuing disclosure document it files with a national electronic repository that the Bond Review Board can access. Both agencies acknowledge the need to report VLB loan performance information but should work together to determine if the information VLB currently files satisfies the reporting requirement or if additional information should be submitted to the Bond Review Board, and if so, in what format.

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*Both VLB and the Bond Review Board acknowledge the need to report VLB loan performance information.*

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#### **The board's statute does not use appropriate language when referring to persons with disabilities.**

The governing statutes for VLB contain a term that is not consistent with the person-first respectful language initiative.<sup>8</sup> The board's Sunset bill should revise the statutes to use person-first respectful language.

#### **The board should continue to implement state cybersecurity requirements and industry best practices.**

Sunset staff found no significant issues relating to VLB's cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the board.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Update the standard across-the-board requirement related to board member training.**

This recommendation would require VLB to develop a training manual that each board member attests to receiving annually and require existing board member training to include information about the scope and limitations on the board's rulemaking authority, as well as information on the board's responsibilities related to contract management as discussed in Issue 1. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

## **2.2 Apply the Sunset across-the-board recommendation regarding policies to separate policymaking and staff functions.**

This recommendation requires the board to adopt policies clearly defining its role of setting policy separate from staff responsibilities.

## **2.3 Continue the VLB loan reporting requirement.**

This recommendation would continue the requirement that VLB report loan performance information to the Bond Review Board to evaluate the program's performance. VLB should work with the Bond Review Board to determine if the information it currently files satisfies the reporting requirement or if additional information should be submitted and in what format.

## **2.4 Update VLB's statute to reflect the requirements of the person-first respectful language initiative.**

This recommendation would direct the Texas Legislative Council to revise VLB's governing statutes to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code.

### ***Management Action***

## **2.5 Direct VLB to ensure stakeholders have access to board information and the public has an opportunity appear before the board.**

Under this recommendation, the board should develop and implement policies that provide the public with the reasonable opportunity to appear before the board and speak on any issue under the board's jurisdiction. As part of this recommendation, the board should also ensure that information about the board and its meetings is available and easily accessible on the VLB website. VLB should develop the policy and post board information to its website by May 1, 2019.

## **2.6 Direct VLB to track complaint data and make the complaint process accessible to the public.**

VLB staff should centrally track and analyze all complaint information to identify trends and issues, and these complaints should be included in the GLO's main complaint file. VLB should also make information about how to file a complaint available on its website. VLB should start centrally tracking all complaints and post a link to the complaint form to its website by May 1, 2019.

### **Fiscal Implication**

These recommendations would not have a fiscal impact to the state. Several of these recommendations are currently required by statute, and VLB has most of the information necessary to comply with the other recommendations, which could be performed with existing resources.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

<sup>2</sup> Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

<sup>3</sup> Section 161.023, Texas Natural Resources Code.

<sup>4</sup> Section 161.033, Texas Natural Resources Code.

<sup>5</sup> “Veterans’ Land Board,” The Texas General Land Office, accessed on June 15, 2018, <http://www.glo.texas.gov/vlb/index.html>; “Boards and Commissions: Veterans’ Land Board,” The Texas General Land Office, accessed on June 15, 2018, <http://www.glo.texas.gov/the-glo/boards-commissions/veterans-land-board/index.html>.

<sup>6</sup> Section 161.034, Texas Natural Resources Code.

<sup>7</sup> “Veterans’ Land Board,” The Texas General Land Office, accessed on June 15, 2018, <http://www.glo.texas.gov/vlb/index.html>; “Compliments/Complaints,” The Texas General Land Office, accessed on June 15, 2018, <http://www.glo.texas.gov/contact/compliment-complaint/index.cfm>.

<sup>8</sup> Section 161.131, Texas Natural Resources Code.



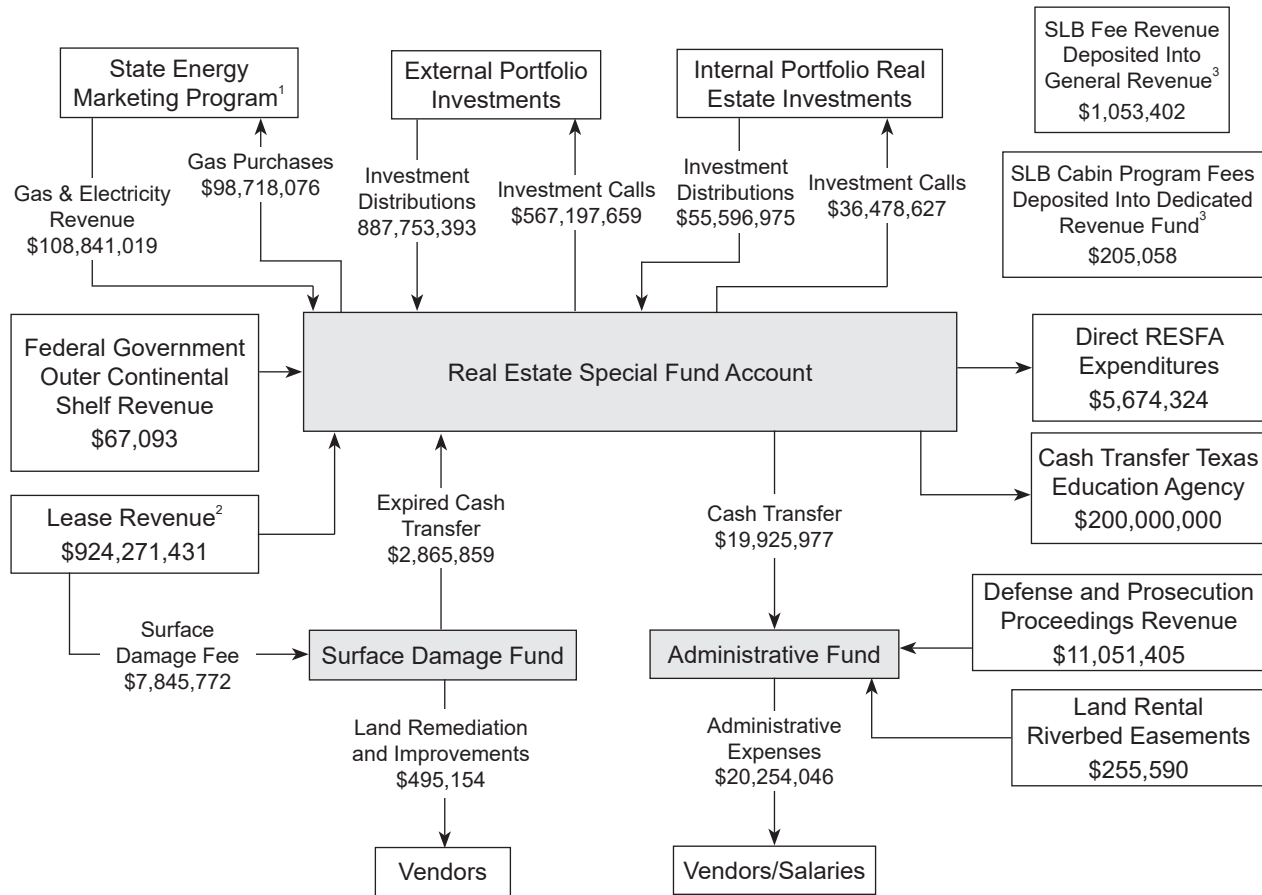
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# APPENDICES



# APPENDIX A

## School Land Board Funding and Investments FY 2017



<sup>1</sup> SLB does not have the authority over this program's fund revenue, rather the land commissioner does.

<sup>2</sup> Lease revenue includes oil, gas, renewable energy, hard mineral, water, surface, easements, and commercial, as well as associated penalties and interest. Some of this revenue is not subject to board approval, but rather land commissioner approval.

<sup>3</sup> These funds are not deposited in the Real Estate Special Fund Account.



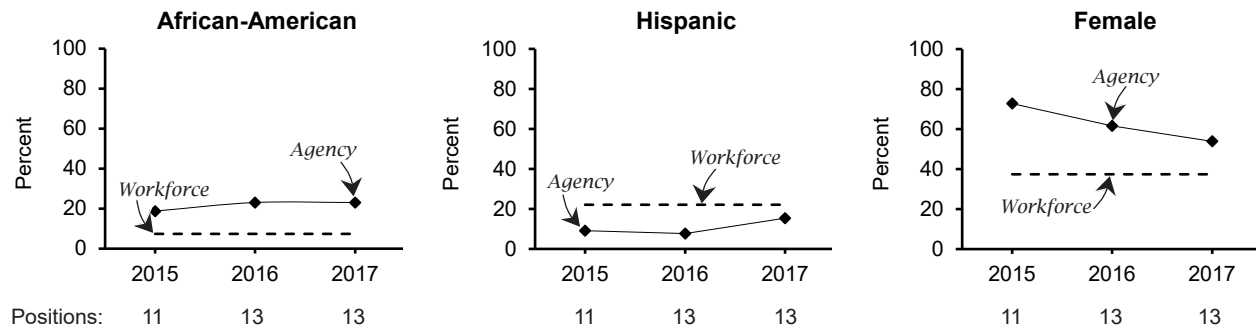


# APPENDIX B

## **Veterans' Land Board Equal Employment Opportunity Statistics 2015 to 2017**

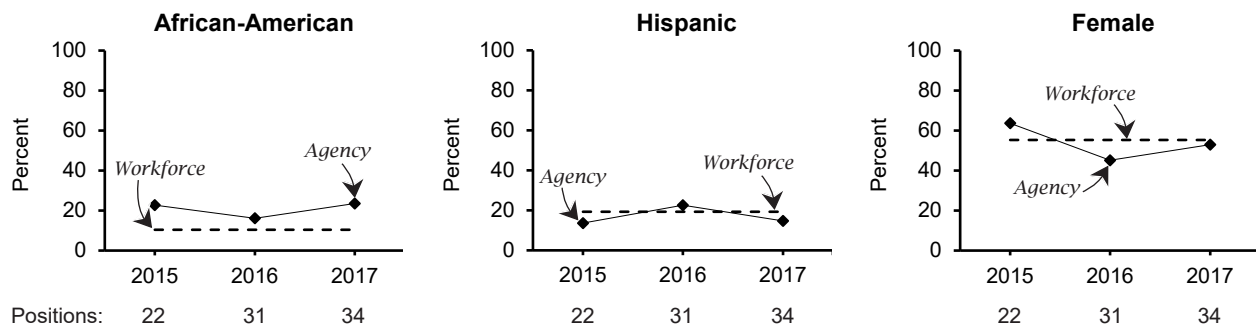
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Veterans' Land Board.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The board has no employees in the technical and skilled craft categories.

### Administration



The board exceeded the civilian workforce percentages for African Americans and females, but fell below the percentages for Hispanics in the last three fiscal years. However, the board has few employees in this category.

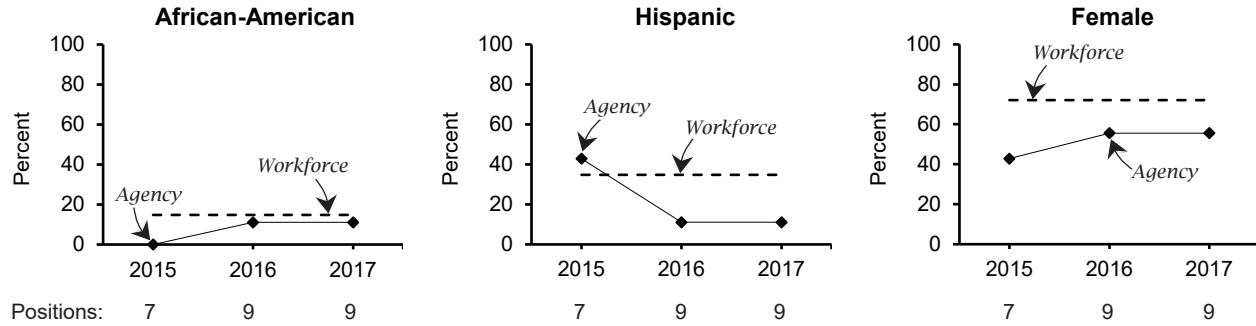
### Professional



The board exceeded the civilian workforce percentages for African Americans in the last three fiscal years but fell below civilian workforce percentages for Hispanics in fiscal years 2015 and 2017, and females for the past two fiscal years. However, the board has improved its percentage of females employed in this category in the last two fiscal years since exceeding the civilian workforce percentage in 2015.

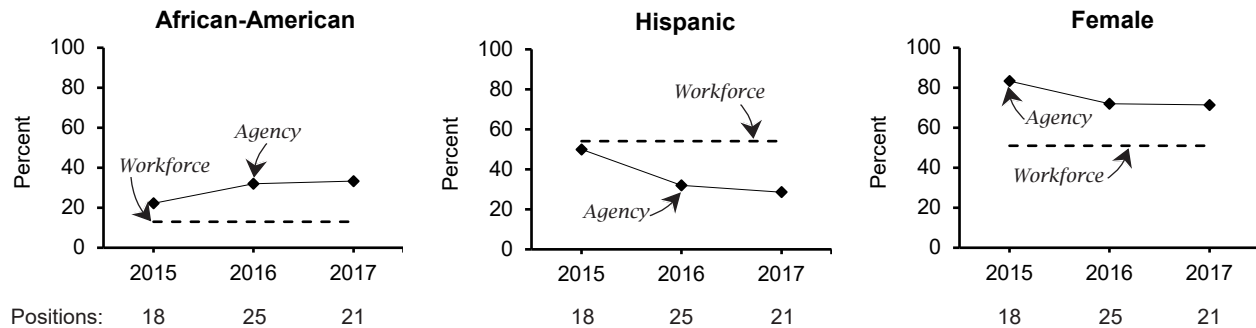
## Appendix B

### Administrative Support



The board exceeded the civilian workforce percentages for Hispanics in 2015, but fell below in all other years and categories. However, the agency has few employees in this category.

### Service/Maintenance<sup>4</sup>



The board exceeded the civilian workforce percentages for African Americans and females in the last three fiscal years but fell below civilian workforce percentages for Hispanics.

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1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

2 Section 21.501, Texas Labor Code.

3 Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

4 The board designates all full time employees in the Service/Maintenance category as paraprofessionals.

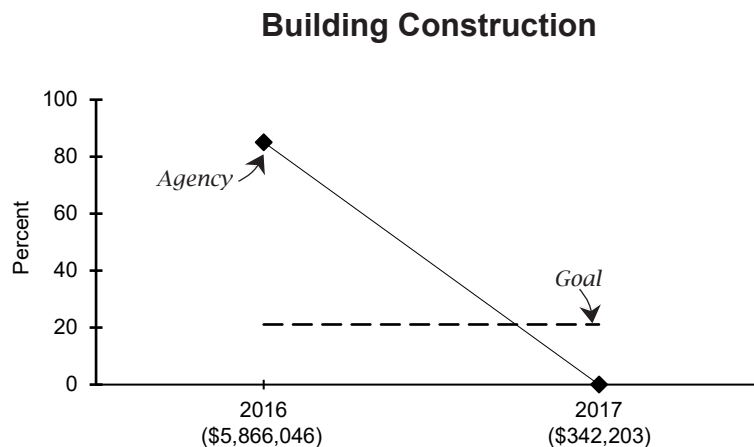
# APPENDIX C

## **Veterans' Land Board Historically Underutilized Businesses Statistics 2016 to 2017**

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Veterans' Land Board's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> The General Land Office (GLO) is not able to report HUB expenditures by program area before fiscal year 2016, so data for fiscal year 2015 is not included in these reports. In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

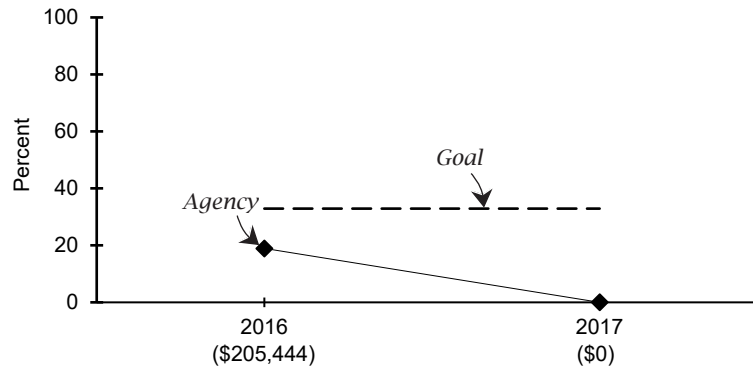
The board's purchases fell short of statewide goals in most categories but exceeding the goals for building construction in 2016 and other services in 2017. The board did not have any spending in the heavy construction category.



The board well exceeded the statewide goal for HUB spending for building construction in fiscal year 2016, but fell below the goal in fiscal year 2017.

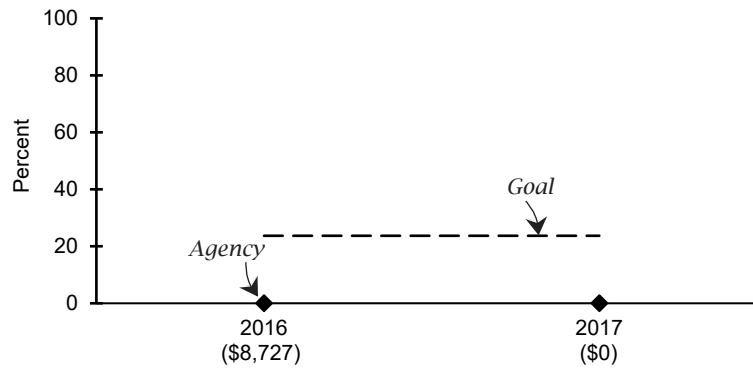
## Appendix C

### Special Trade



The board fell below the statewide HUB goal for special trade in the last two fiscal years.

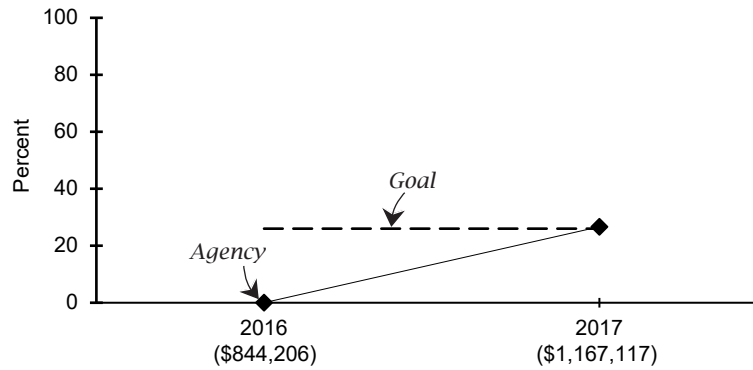
### Professional Services



The board failed to meet the statewide goal for HUB spending for professional services in the last two fiscal years.

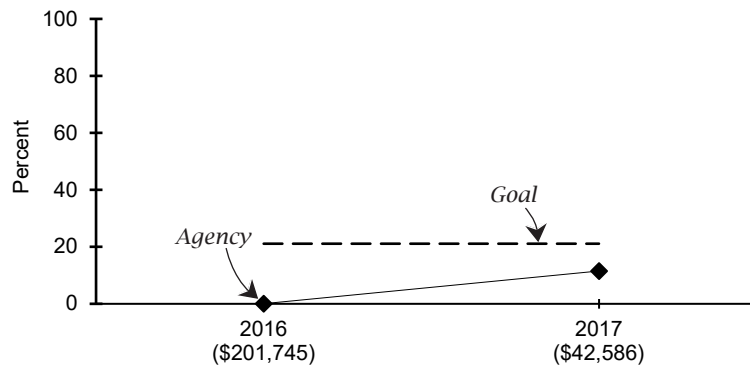
## Appendix C

### Other Services



The board fell below the statewide goal for its other services spending in fiscal year 2016, but exceeded the goal in fiscal year 2017.

### Commodities



The board failed to meet the statewide HUB goal for commodities from fiscal years 2016 to 2017.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.



# APPENDIX D

## *Staff Review Activities*

During the review of the School Land Board (SLB) and the Veterans' Land Board (VLB), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with SLB, VLB, and General Land Office personnel; attended board meetings; met with board members; conducted interviews and solicited written comments from interest groups and the public; reviewed board documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and function of similar boards in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to SLB and VLB:

- Toured the State Veterans Home in Floresville
- Toured the State Veterans Cemetery in Killeen
- Observed a pooling committee meeting
- Observed an investment advisory committee meeting
- Observed a contract evaluation team meeting
- Attended a VLB training for realtors about its loan programs
- Surveyed investment managers; buyers of state land; and oil and gas, land, and energy associations to gather feedback on SLB's performance and evaluated responses
- Surveyed veterans homes residents and family members, VLB contractors, veteran services organizations, and veterans county service officers to gather feedback on the VLB's performance and evaluated responses





Sunset Staff Review of the  
*School Land Board*  
*Veterans' Land Board*

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