



**Barton Springs  
Edwards Aquifer**  
CONSERVATION DISTRICT

August 14, 2018

Texas Sunset Advisory Commission  
P.O. Box 13066, Austin, Texas 78711  
Email: [sunset@sunset.texas.gov](mailto:sunset@sunset.texas.gov)

Mr. Chairman and Members of the Texas Sunset Advisory Commission,

On behalf of the Dr. Brian A. Smith, Ph.D., P.G. and Brian B. Hunt P.G., we are providing comments and opposition to the Sunset Commission's recommendation to abolish the Texas Board of Professional Geoscientists (TBPG). Instead of abolishing protections afforded to the public, we respectfully ask that the Sunset Commission provide some suggested reforms that would raise the bar of the minimum standards of practice--but not do away with those standards and protections. Some recommendation for reform are provided below. Protecting the public health, safety, welfare, and the State's Natural Resources was the intent of the agency when it was formed. With the incredible growth of Texas, this mission is ever-more critical. Our experience and perspective comes from the management of groundwater in Texas—a vital resource that is both a private property right and also a common pool resource with broad impacts to the public.

We strongly disagree with the overall assessment and arguments made in the Sunset Report described as supporting the abolishment of the TPGB. We respectfully offer thoughts and observations counter to the issues presented in the report.

**1) "No measurable impact to public protection."**

Unlike a building collapse that the Sunset Commission could clearly point to as a catastrophic event, many geologic impacts are inherently slow moving. That is the nature of geoscience. While there are certainly areas where catastrophic events can occur due to bad geoscience work—we would defer to our colleagues that work in the engineering and environmental sector to provide those examples. Our personal experience is in groundwater availability—something that is vital to the health, welfare and economy of Texas.

Impacts to groundwater resources are often on the scale of decades. Indeed, groundwater planning, whether County or State level, is on the order of decades. As groundwater scientists working for a groundwater district, we rely on qualified geoscientists or engineers that have gone through the State's rigorous process to submit groundwater reports that have been produced for the public. The public hires these professionals to do the groundwater work. Of the 45 groundwater reports in Central Texas since 2003 that we have reviewed or used in other evaluations, about 85% were conducted and

stamped by a PG. The public that hired those consultants, and the scientists/agencies such as ourselves know there are minimum standards of practice for that work.

In summary, geoscience inherently has broad impacts on the health and welfare of the public, but is also inherently difficult to measure impacts on a short time frame. The public is entitled to standards of practice of geoscientists that REQUIRE the public's interests be evaluated and considered regardless of the client's interests and the time scale of impact. At times the work done may not be for a public client, but the public interests are often at play.

*By removing the TBPG and there would be no vehicle to keep the public's interests at the forefront of geoscience work, nor a mechanism (other than litigation) to police, keep out bad practitioners, and provide restitution.*

**2) "Historical lack of meaningful enforcement."**

The report states there were 147 sanctions over the past 5 years and shows there is action taking place. It can be argued that "meaningful enforcement" is subjective. However, we think that part of the lack of "meaningful enforcement" is the result of the lack of clarity and examples of how to apply the rules. For example, we suggest that language in the Code of Professional Conduct could be made clearer or explained with FAQs for the various criteria. For example, dishonest practice (§851.104.) includes prohibiting misleading impressions. However, expanding the definition and providing examples of this would be useful to the practice. Do misleading impressions also apply to key figures, discussions, or just the conclusions of the work?

*Rather than abolish the agency and the standards of geoscience practice, the report should recommend ways to improve the rules or protocols and actions that would result "meaningful" enforcement and raise the bar of practice even higher.*

**3) "Direct oversight of geoscientists work provided by other agencies render state regulation of geoscientists unnecessary to protect the public."**

This is simply a spurious observation. Oversight of professional work by agencies is true of nearly all other professional work, such as PEs, surveyors etc. Would this argument be used to dissolved licenses for those professions? We do not think so.

It is true that agencies often review geoscience work, as we do in our jobs as PGs for a groundwater conservation district. However, we require a minimum standard of practice and work guaranteed by a Code of Professional Conduct defined by the TBPG to accept that work. We do not have the time, resources, or authority to make that determination and require those standards. All groundwater reports we review are submitted on behalf of the public (client) and usually have broad implications for the public at large. The public generally cannot operate under a 'buyer beware" philosophy when looking for geoscientists, nor can the public at large feel like their interests are protected without a TBPG setting standards.

*Thus, the PG licensure assures both agencies AND the public of minimum standards of practice and the Code of Professional Conduct under which that works is done.*

4) "The need for regulation is even further diminished by the fact that effectively half of the practicing geoscientists in Texas are exempt from regulation."

While this is a true statement, my understanding this was a compromise for the oil and gas industry to not oppose the TBPG. However, the nature of oil and gas work is governed by a free-market business interest, that can self-regulate. Therefore, we would generally agree with this exception. However, when there are geoscience reports submitted to regulatory agencies from the oil and gas industry, such as to the TCEQ for contamination at a given site etc, that would require a P.G. geoscientist because there is health and public safety at play and not just business interests.

5) "Additionally, the Board grandfathered about 78% of current licensees into the profession without licenses passing the rigorous requirements..."

This is a disingenuous comment that simply ignores the reality of implementing a license in 2001 on a profession and it's practitioners. At the time of the TBPG creation, it was understood this was going to be the case initially, but would change over time. Those statistics will be flipped in the next 20 years as practicing grandfathered geologists retire.

*We note that in order to be grandfathered there were minimum standards of education, experience, and professional and personal references in addition to other standards that had to be satisfied. In other words, there was significant vetting of candidates for licensure under grandfathering.*

Thank you for your consideration of these comments,

Brian A. Smith, Ph.D., P.G.



Brian B. Hunt, P.G.

