

From: [Sunset Advisory Commission](#)
To: [Brittany Calame](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Thursday, August 16, 2018 10:04:11 AM

-----Original Message-----

From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Thursday, August 16, 2018 10:00 AM
To: Sunset Advisory Commission <Sunset@sunset.texas.gov>
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS BOARD PROFESSIONAL GEOSCIENTISTS TBPG

First Name: Christopher

Last Name: Caran

Title:

Organization you are affiliated with:

Email:

City: Austin

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

In accordance with the Sunset Provision (TOC §1002.003) in the Texas Geoscience Practice Act (TGPA), the staff of the Texas Sunset Advisory Commission (TSAC) reviewed the role and performance of the Texas Board of Professional Geoscientists (TBPG) and offered a recommendation to “Abolish the Texas Board of Professional Geoscientists and repeal the Texas Geoscience Practice Act.” The basis for this recommendation is discussed in the TSAC’s Staff Report (Report) on the TBPG.

Whereas the Report concluded “that professional geoscientists provide valuable assessments and research related to groundwater, subsurface concerns, and other areas,” it wrongly found “a historical lack of meaningful enforcement action” and that the TBPG has had “no measurable impact on public protection.” Moreover, the Report questioned the legislative wisdom in creating the TBPG in 2001, stating that “Sunset staff found no examples or evidence of significant public harm directly attributable to unqualified or unlicensed geoscientists, either before or after the board’s creation.” The Report further states “that effectively half of the practicing geoscientists in Texas are exempt from regulation,” and finds fault in the fact that “a large majority of current licensees were grandfathered into the profession without full assurance of minimum competency.” Finally, the staff concluded that “Other state agencies provide more direct and robust evaluation of geoscience work than the board” and that “Professional associations” (of geoscientists) require “qualifications that are similar to or, in some cases, more stringent than current state requirements.” The report presented additional critiques, but focused on those quoted here.

These concerns are easily rebutted. Regarding a purported lack of enforcement and impact on public protection, it is perhaps instructive to compare the 17-year record of the TBPG with that of TSAC, over its 41-year history. In those 41 years, the TSAC self-reports that it has been instrumental in “abolishing” 85 agencies, of which 39 were actually eliminated and 46 were modified. That is, on an annualized basis, TSAC has reduced unnecessary regulation by 0.95 agencies and succeeded in altering the activities of another 1.12 agencies. In contrast, TSAC’s Report noted that, during 2017 alone, TBPG had imposed 147 sanctions (of various kinds) against geoscientists failing to meet

licensing standards and unqualified individuals operating in violation of the TGPA. Moreover, the TBPG accomplished this with only a fraction of the staff and budget enjoyed by the TSAC.

Because the TSAC staff appears to have made no serious inquiries regarding the potential adverse effects of the activities of those sanctioned, in 2017 or before, they determined that the TBPG “does not provide meaningful public protection.” Such a far-reaching conclusion would be justified only after a much more thorough investigation of the circumstances surrounding these transgressions, and it completely ignores the deterrence provided by licensing and the availability of a ready forum for reporting and redressing infractions. The sanctions imposed by TBPG addressed the professional misconduct of persons who might otherwise have caused adverse effects on the general public. According to the National Association of State Boards of Geology (ASBOG), an organization touted in the Report, professional geoscientists are licensed in 32 states and successful performance on standardized tests is required in one other. The advantages and significance of licensing standards and licensure, and the resulting protection of public interests, are, therefore, evident to two-thirds of the country.

“Sunset staff found no examples or evidence of significant public harm directly attributable to unqualified or unlicensed geoscientists, either before or after the board’s creation.” This is perhaps the most disturbing statement in TSAC’s Report and is a direct indicator of the superficial nature of the staff’s assessment. Examples of the disastrous consequences of inadequate geoscience would and do fill encyclopedias and include many noteworthy occurrences in Texas. Inasmuch as the TSAC Board will meet in Austin to review the staff’s recommendation, it is fitting to recount a recent event in the area. Earlier this year, a large cave opened spontaneously beneath a street and neighborhood in the nearby city of Round Rock, causing considerable damage to both private property and public facilities. Although there were no injuries, this large-scale ground collapse did indeed cause appreciable “public harm”. In addition to the costly remedial measures required to restore the neighborhood, the financial impact will almost certainly include substantial reduction of property values and inhibition of land sales throughout the community. The methods of road and housing construction had undoubtedly met local engineering standards, but until the collapse, no geological assessment was performed. Clearly, retaining a professional geoscientist prior to construction would not have guaranteed discovery of the cavern without misadventure; but because practicing geoscientists are well aware of the area’s inherently hazardous subsurface conditions, it is likely that a need for appropriate testing would have been anticipated and proper tests would have been implemented.

The Report states, although without discrete evidence, that the number of geoscientists in the state who are exempt from licensing requirements is equal to the number who are not. An explicit list of exemptions was imposed by the Legislature when the TGPA was enacted, for reasons that may, in the future, require reconsideration. Regardless, the Legislature recognized that, despite this constraint, the relevance of licensure was unreduced, and many of those geoscientists working in professional capacities that are exempt have voluntarily chosen to seek licenses and adhere to professional standards. The Report correctly states that many geoscientists obtained their licenses by being “grandfathered” at the time the TGPA took effect; that is, by demonstrating professional competence without separate testing.

Testing was required for those seeking licenses following the brief period initially allowed for grandfathering and remains a requirement today. In this respect, the TGPA is not unlike other professional licensing agencies within the state and elsewhere. Grandfathering facilitated establishment of a core body of licensed professionals--thereby ensuring timely implementation of the TGPA--but it did not guarantee continuation of those licenses. The larger issue relates to what the Report calls a lack of “full assurance of minimum competency.” This is an entirely misleading argument. Every licensed geoscientist in the state, including those grandfathered, was required to meet specific criteria regarding education, relevant work experience, competence attested by other professionals, ongoing professional training, and ethical behavior. Compliance with these standards is subject to review through random audits conducted by TBPG, such that each licensee must maintain written records and other evidence of the competence that permitted licensing. The testing required for licensees who were not grandfathered is comparable to that for college graduation and admission to university graduate programs, which all or most of the grandfathered geoscientists had already met prior to licensing. Grandfathered geoscientists did not fail to pass the licensing tests; they merely provided other evidence of competence, which then must be confirmed on a continuing basis.

The TSAC staff seems to equate state licensing standards with document peer reviews and other professional oversight when declaring that “Other state agencies provide more direct and robust evaluation of geoscience work than the board” and that “Professional associations” (of geoscientists) require “qualifications that are similar to or, in some cases, more stringent than current state requirements.” These comparisons are invalid.

Certainly, state agencies such as the Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RCT) evaluate specific work products prepared by geoscientists to ensure the quality of those products. TCEQ, RCT, and other agencies typically require advance presentation of credentials, including professional licenses, to qualify the individuals and firms who may be charged with creating those products. A one-time or, at most, a short-term review of the geoscientists' qualifications is required, unlike licensing, which provides ongoing assurances of competency. Professional societies of geoscientists also maintain standards for membership and some even provide their own certification programs, although their certificates are not the equivalents of licenses. Geoscience organizations help to inform and facilitate professionalism, but they have no authority to deny work as a professional when an individual is unqualified. Nor does society membership or society-sponsored certification provide an imprimatur comparable to a state-awarded license. Those who might argue otherwise merely demonstrate their lack of familiarity with the geoscience profession.

The TSAC's Report provides no evidence that the TBPG has failed to fulfill its legislatively-mandated responsibility to uphold and maintain professional standards for the state's geoscientists. Instead, the Report is a confused and misrepresentative collection of half-truths and inappropriate conflation. At a time when science and geoscience in particular is assailed by politically motivated detractors and those who routinely deny reality, when the head of a federal agency self-identifies as a geologist but would not qualify for licensing in Texas, and when professional conduct itself is too often denigrated or ignored, the TBPG has consistently served the people of Texas by ensuring that qualified geoscientists are daily working to protect their interests and the future of our state. The Legislature would be well advised to consider expanding the scope of the TBPG and TGPA.

Any Alternative or New Recommendations on This Agency:

- 1) Reject recommendations from TSAC staff to abolish TBPG and rescind TGPA.
- 2) Eliminate some or all of the current exemptions limiting the scope of the TGPA.

My Comment Will Be Made Public: I agree