

AUG 17 2010

08/13/2018

TEXAS SUNSET ADVISORY COMMISSION
P.O. Box 13066
Austin, Texas 78711

Re: Texas Board of Professional Geoscientists Review

Mr. Chairman and Members of the Commission:

Upon hearing the recommendation made by the Commission/Commission's staff recommending the dissolution of the Texas Board of Profession Geoscientists (TBPG) we, the undersigned, want to relate some our concerns to you that may not have been considered during the review of the TBPG:

- 1) The TBPG is a relatively young board, and as a direct consequence, significant enforcement actions would not be expected to occur within the time frame of 2001 until present. The lack of a serious record of enforcement actions is the direct result of the TBPG's presence that has served as a deterrent to poor geoscience practice, practice outside the field of expertise, and especially unlicensed geoscience practice. Further, a comparison of complaints/enforcement actions of other professional boards should be evaluated, e.g. a review of the Texas Board of Professional Engineers enforcement actions when it was in its infancy may be of benefit.
- 2) It was specifically stated in the report prepared by the Commission's staff that there was "...no measurable impact on public protection, and more direct oversight of geoscientists' work provided by other state agencies' render ongoing state regulation of geoscientists unnecessary to protect the public..." We beg to differ with that conclusion based on the definition of the public's welfare. As legally defined, the public's welfare includes its financial welfare. Many common and environmentally related projects in the State of Texas include those whose costs are assessed to those who may have caused the environmental issue (individuals, small locally owned companies, etc.) and these actions most certainly impact the financial welfare of the public because tax dollars help fund the state agencies and the salaries of state employees involved with the oversight of such environmental matters/cleanups. Therefore it is rightfully concluded that the public's welfare is indeed being impacted. The measurable impact to all parties can be millions, and perhaps cumulatively, billions of dollars over the extended life of many of these environmentally sensitive projects.
- 3) Also it was stated that "... History shows no catastrophic event or public harm as the impetus for creating this regulation..." During testimony provided during legislative committee hearings held prior to the passage of the act creating the TBPG, many examples were provided that illustrated the impetus related public harm that had been done as a result of the lack of competent geologic input. Perhaps a review of those materials is in order before any recommendation is ultimately considered by the Sunset Commission.
- 4) Also as stated in the report to the Commission "...the board grandfathered about 78 percent of current licensees into the profession without licensees passing the rigorous exam requirements to obtain a license, undermining the promise of competence that typically comes from licensing agencies..."

As a direct response to the quoted language contained in the report, was this report to the Commission reviewed by legal staff prior to its release? A profession is considered a property right guaranteed under the US Constitution and its Amendments and, as such, to not "grandfather" those practicing the profession of the geosciences would constitute an illegal taking of one's personnel property (intellectual property rights). All states that have enacted geoscience or other profession licensure laws typically and in adherence to the US Constitution and its Amendments **MUST** allow for and contain a "grandfathering" provision in order to be legally valid/applicable. Additionally, even though those who grandfathered were not subject to examination for the reason previously stated, those applicants underwent significant scrutiny in terms of appropriate education and experience prior to being licensed by the TBPG.

- 5) Lastly, it was stated that "...more direct oversight of geoscientists' work (is) provided by other state agencies' render ongoing state regulation of geoscientists unnecessary to protect the public..." If that were true, then there would also be no need for many, if not all other professional boards, e.g. engineers. Basically what was stated is that other state agencies (in this case, the Texas Railroad Commission and the Texas Commission on Environmental Quality) would become the licensure boards for geoscientists? Those "other state agencies" have little or no oversight and/or disciplinary avenues available to them regarding the professional practice of geoscience (or for that matter any other profession), and may not have appropriately qualified geoscientist administrators and/or other appropriately qualified professionals on staff, nor the laws/regulations required to implement the policing powers required (as was incorrectly stated). Further, the Texas Commission on Environmental Quality has reviewed reports that have significant geoscience content and some of those reports were not reviewed by geoscientists within that agency. Further, those who did review, at least in one case, failed to recognize misstatements of geoscience contained therein, again emphasizing the continuing need for the TBPG. For uniformity sake alone, the statement cited concerning "other state agencies" regulating professional practice should apply to ALL other professional boards. **Based on that flawed logic, there then would be absolutely no need for any professional licensure boards to exist in The State of Texas.**

Therefore, we humbly request that the Commission carefully consider our concerns and keep the TBPG intact to continue its important work into the future for the benefit of all of the aspects of the public's health, safety, and welfare. We encourage you to consider the impact of the mere presence of the TBPG as a significant public protective mechanism. Our very serious concern, based on our collective experiences with licensing agencies in our individual states, is that elimination of the TPBG will, without question, facilitate and even encourage the involvement of unlicensed, and very often underqualified individuals to perform various geological services and tasks. The potential impact of this reduction in oversight of the profession, is a direct affront to the protection of the health, safety, and welfare of the public.

Respectfully submitted,



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