From: Sunset Advisory Commission
To: Brittany Calame
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Thursday, August 16, 2018 5:05:00 PM

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From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Thursday, August 16, 2018 5:00 PM
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: Kirk

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State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or
Opposed:
I am in favor of reauthorizing the Texas Geoscience Practice Act (Texas Occupations Code Chapter 1002) during the 2019 Texas legislative session to prevent its expiration at the end of its scheduled sunset review period. Reauthorization of this act will permit the Texas Board of Professional Geoscientists (TBPG) to continue with their important mission to "protect public health, safety, welfare, and the state's natural resources by ensuring only qualified persons carry out the public practice of geoscience and enforcing the Code of Professional Conduct the Board has established for its licensees."

My recommendation is based on three key observations. First, the people, environment and natural resources of the state of Texas have benefited substantially over the 15 years' existence of the TBPG from the requirement for licensed professional geoscientists to be involved in the conduct and approval of geoscience activities such as environmental site assessments, soil evaluation for new construction or remediation of contaminated soil and groundwater, and investigation of natural hazards such as faulting, land subsidence, and coastal erosion. Second, with the increasing stress being placed on public health and the environment through climate change, environmental disasters such as extreme drought or flooding, and conversion of natural habitat to urbanized areas, the importance of having licensed professional geoscientists will only increase in the future. Third, through administration of its licensure program, the TBPG enhances the competence and professionalism of geoscientists by ensuring adequate education and experience requirements for licensees, requiring continuing education on an annual basis, and encouraging adherence to its professional code of ethics.

The initial Sunset Advisory Commission Staff Report on the TBPG, issued at completion of the commission's evaluation phase, recommends abolishing the TBPG and repealing the Texas Geoscience Practice Act, largely because they found "a historical lack of meaningful enforcement action, no measurable impact on public protection, and more direct oversight of geoscientists'
work provided by other state agencies."

However, the above findings do not justify abolition of the TBPG. On the contrary, the lack of meaningful enforcement action and the oversight of professional geoscience work provided by other state agencies such as the Texas Board of Professional Engineers and Texas Commission on Environmental Quality can be interpreted as evidence that the coordination of activities among the TBPG, other state regulatory agencies, and licensed professional geoscientists and engineers has been quite effective in protecting the public health and environment and thereby minimized the need for enforcement action in response to regulatory requirements or public complaints. The requirements for licensed geoscientists, who are professional experts with specialized knowledge in one or more branches of geoscience, to sign and seal geoscience work such as maps, drawings, and reports is complementary rather than duplicative of the broader oversight and approval provided by other state agencies or professional disciplines. This relationship is not unlike that existing between other professions that are licensed by the state. For example, Department of State Health Services (DSHS) licensed asbestos project designers or asbestos consultants are required to design and sign off on asbestos abatement projects for public buildings, but professional engineers also need to be involved in the design or approval if the abatement involves modifications of a building's engineering systems (civil, structural, electrical, or mechanical).

The positive benefits to the public and environmental health that have been made by licensed professional geoscientists are most likely quite numerous and significant, albeit difficult to quantify because of the earth's variable surface and subsurface environments and how they interface with human activity. Numerous examples could be cited in support of professional geoscientists' work, but there is one example that is particularly relevant in view of recent experience from Hurricane Harvey (2017) and other flooding events.

In design of monitoring programs for potentially contaminated soil and groundwater, it's commonly assumed that contaminants will spread predominantly downstream following the surface or shallow groundwater gradients, and upstream monitoring wells are therefore often sparsely distributed or omitted altogether. While this is valid for many if not most applications, it is often insufficient in portions of the Gulf Coastal Plain of Texas where there is a gradual surface gradient subject to frequent flooding. Floodwaters can temporarily reverse the normal flow of surface and shallow groundwater, thus spreading contaminants away from their source in both upstream and downstream directions. The situation is often exacerbated by the presence of railroads in industrial areas, where the contamination can spread more rapidly in both directions along railroad beds owing to the combined effects of flatter gradients engineered for laying of the tracks and the highly permeable gravel within the railroad bed itself. These are all local subtleties that the professional geoscientist is well qualified to address. Attention to details such as these provide more accurate site characterization, better evaluation of environmental risks, more timely remedial action, and appropriate mitigation plans to minimize the effects of any remaining contamination that might spread beyond the source area during flood events. Continued existence of the TBPG and licensed professional geoscientists will therefore be critical to help design and build the numerous flood-mitigation projects currently being proposed for coastal Texas.

The Sunset Advisory Commission also questions the need for the TBPG because many geoscience activities are exempt from licensure requirements, the public is not the direct consumer of regulated geoscience services, and many licensed geoscientists were "grandfathered" into the program during its early years through exemptions from taking the qualifying tests required of current license applicants. But none of these observations provides convincing evidence for abolishing the TBPG either.

While it would undoubtedly be beneficial if a broader range of geoscience activities was subject to licensure and regulation, it is far better to have some regulated activities than none. The most critical activities impacting public and environmental health are largely covered, including site characterization, identification of threats to public health and the environment, and the design and execution of remediation and mitigation projects. There are also many dedicated geoscientists working for exempted organizations such as academic institutions, research organizations, and oil and gas exploration and development companies who have chosen licensure to enhance their own professional development, and therefore that of their employers, thus providing additional benefit to the public.

It is certainly true that most geoscience services are provided to governmental entities or private enterprises rather than directly to individuals. Nevertheless, there is obvious benefit to the public and environmental health from new wastewater treatment plants, development of sustainable water sources, flood-mitigation projects, and environmental site characterization and remediation regardless of who the paying client is.

Grandfathering is a common practice when establishing new licensing programs, as it provides sufficient licensure during early years of the program while still providing adequate requirements to ensure high levels of technical expertise and professionalism. When the Texas Department of Health (predecessor to the DSHS) first established the licensure program for asbestos consultants, for example, consultants were exempted from the current requirement of having a bachelor's or higher degree in architecture, engineering, physical or natural sciences if they had enough work experience and otherwise met the licensing requirements.
Considering that the TBPG has been issuing licenses for only 15 years, the fact that over 20% of current licensees have already passed the qualifying examination is encouraging. As grandfathered licensees retire, this percentage will increase in the future.

In summary, reauthorization of the Texas Geoscience Practice Act and continuation of the TBPG and its licensure program is recommended to ensure continued protection of the public health and natural resources through the availability of qualified, licensed professional geoscientists. Such reauthorization would be of minimal expense to the State of Texas; in fact, in recent years the TBPG has been self-supporting through income from licensure and enforcement activities and has accumulated modest surplus funds that were contributed to the General Revenue Fund.

Any Alternative or New Recommendations on This Agency: The TBPG should be given an opportunity to address their shortcomings identified by the Sunset Advisory Committee so that they can work to continuously improve their efforts for the protection of public health and natural resources and thereby strengthen their case for continued existence whey they are next up for sunset review.

My Comment Will Be Made Public: I agree