

From: [Sunset Advisory Commission](#)
To: [Brittany Calame](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Tuesday, August 14, 2018 8:03:06 AM

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From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Monday, August 13, 2018 7:28 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: April

Last Name: Hoh

Title: P.G.

Organization you are affiliated with: representing self

Email:

City: Pflugerville

State: Texas

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

I object to the recommendations of the Sunset Advisory Committee (SAC), and strongly urge the SAC to reassess their recommendation to abolish the Texas Board of Professional Geoscientists and repeal the Texas Geoscience Practice Act. The recommendation of the SAC appears to be based on inaccurate findings and a misunderstanding of the geoscience profession, which I will summarize below. The licensure of professional geoscientists in Texas is the most effective tool to protect the public at large from incompetent or reckless behavior of people that are not qualified to practice geoscience, whether those people are currently licensed as PGs or not.

Assertion 1: The board's regulation does not provide meaningful public protection. The Legislature passed the TGPA in 2001 to ensure public protection. Professional geoscientists (PGs) do this every day by applying their knowledge of geoscience to real-world conditions. Examples include: accurately evaluating potential for groundwater contamination from hazardous sites, assessing for groundwater contamination to migrate off a site to public or private drinking water wells, identifying karst features and working with PEs to ensure that the extent of them is understood to prevent collapse or contamination to the aquifer, mapping recharge zones of aquifers, evaluating groundwater availability in aquifers, assessing groundwater chemistry and hydrogeology for aquifer storage and recovery projects, etc.

-The SAC report falsely asserts that public protection was not a primary reason to regulate geoscience, and includes a citation to a 1993 Houston Geological Society bulletin. This citation referenced in the SAC report was in the Commentary section of the bulletin (the opinion section), not within the article in the bulletin cited in the SAC report. This bulletin includes an update on licensure "Task Force for Registration of Geologists and Geophysicists in Texas" on pp 45-47 that identifies right-to-work (to protect the public interest) and public safety and welfare as the two primary reasons for licensure. In fact, this paper states that "[w]e have a growing file of documented cases wherein unqualified engineers approved projects in which unappreciated geologic factors resulted in or contributed to project failure...". This statement alone suggests that PG licensure was predicated on public protection. The SAC

did not include the relevant information associated with the bill that passed in 2001 (SB 405 of the 77th Legislative Session). This included a report from the Texas sections of the Association of Engineering Geologists and American Institute of Professional Geologists prepared for the 77th Legislature to support SB 405. This report expressed that protection of the public health, safety and welfare was the primary reason for professional licensure. (See https://cdn.ymaws.com/www.aegweb.org/resource/resmgr/Licensure_Resources/vplsb405.pdf).

This report includes several examples where the geoscience was not understood causing catastrophic failures.

-The SAC report cites that the Texas Association of Professional Geoscientists (TAPG) did not mention public protection in a text box. The TAPG is not the TBPG, and is not affiliated with the TBPG. TAPG is a separate, private political organization chartered with promoting the profession. It does not have regulatory oversight of PGs, nor does it represent the public. The TBPG does that. TAPG has no authority to regulate geoscience behavior, the TBPG does. Similar organizations exist for the PEs, which also serve the profession.

-The SAC report concludes that the public does not directly consume geoscience, however, the public does not directly consume engineering, either. Both of these professions largely serve the interest of the public at large, but are rarely hired directly by members of the public. This does not mean that the public does not benefit from having PGs (or PEs). The very nature of geoscience can mean that it is often not visible to the public. The public might report getting lice from a bad barber, or outrage at a dam failure, but it is harder for the public to become aware of a PG's work that prevented contaminated groundwater from migrating to a public or domestic water well. That work is largely invisible from the surface, but is still essential to protect public health.

-The SAC report falsely states that exemptions from geoscience regulation has caused no public harm. The exemptions speak more to the power of the oil and gas and professional engineering lobbies than the "harmlessness" of unregulated geoscience. The public has shown intense concern with oil and gas fracking impacts to their aquifers and water wells, and oil field injection causing induced seismicity. That those are "exempted" from licensure has not reduced the risk of those activities to the public, or the public's concern.

Assertion 2: The board takes no significant enforcement action. The board has sought enforcement against unlicensed individuals and those PGs that are not adhering to the education requirements. These enforcement actions are not inconsequential and I would assert that they do protect the integrity of the PG license for the public interest. However, I agree that the PGs do not appear to be regulating each other (through complaints) as effectively as they could. This does not mean that bad actors do not exist, but it represents a failure of the community to take action against those bad actors. I would suggest that a remedy more appropriate than abolishing the board would be to enhance enforcement powers (i.e. increase the fines the board can levy). Additionally, I would recommend that the TBPG create an advisory group of licensed individuals (including several PG members outside the agency or board) to create guidance documents describing standards of care for the profession. This group could then pass the documents through the Board, and members of this group could do professional outreach with other PGs. I would also recommend that the TBPG retain at least one additional licensed PG in the agency. Since the agency is largely run by non-geoscientists, it may be difficult for the agency to understand the profession well enough to define some of these charges.

Assertion 3: That grandfathering of existing PGs "undermines the promise of competence". This finding is frankly a bit insulting to the existing PGs today, and makes unwarranted assumptions about our abilities to practice geoscience effectively. Professional boards often have the grandfathering provision out of necessity to establish funding. The PE board grandfathered engineers with certain years of work experience until quite recently. Those PEs did not take the exams. Would this SAC find them also incompetent? The existing PGs that were grandfathered still had to have 5 years of experience, meet the education requirements, receive 5 letters of recommendation, and undergo a review process by the TBPG. This review process was open to public comment. That 78% of those PGs still remain licensed is largely due to the young age of the TBPG.

Assertion 4: That regulatory powers of the AIPG are equal to the TBPG. The AIPG is a professional association that can only limit a person's access to the association. They have no regulatory authority over their members and cannot levy fines or other penalties. This does not have the same weight as professional licensure.

Conclusion: Abolishing the Texas Geoscience Practice Act (the Act) will eliminate any legal definitions of geoscience, including the standard of care for the profession. This would eliminate any public protection for the application of bad geoscience and would not provide regulatory agencies or public civil suits with any legal

standards for competent geoscience work.

It is fair to assume that this will cause more public dollars to be spent on poorly designed remediation sites, or landfills, or holding ponds that are based on bad geoscience, without any legal recourse to prevent damage to the public or environment. Without the legal standards, bad geoscience would be proven in civil cases long after a negative impact has occurred to the public, instead of having a legal basis to prevent the bad geoscience work from being relied upon in the first place. Additionally, much of the bad geoscience I have witnessed in my professional career has come from those exempted individuals, rather than the geologists licensed as PGs.

I thank you for your time, and respectfully request that you consider my comments in full. I recommend that the SAC reverse its recommendation to abolish the TBPG and the Act. I recommend that both the TBPG and the Act remain in place, but that more guidance and authority be given to the TBPG about the creation of an advisory work group to enhance enforcement efforts.

Any Alternative or New Recommendations on This Agency:

1. Enhance enforcement powers of the board (i.e. increase the fines the board can levy)
2. Instruct the TBPG to create an advisory group of licensed individuals (including several PG members outside the agency or board) to create guidance documents describing standards of care for the profession. This group could then pass the documents through the Board, and members of this group could do professional outreach with other PGs.
3. Enhance meaningful outreach to licensed PGs regarding enforcement.
4. Instruct the TBPG to retain at least one additional licensed PG in the agency. Since the agency is largely run by non-geoscientists, it may be difficult for the agency to understand the profession well enough to define some of these charges.
5. Work with the TBPE to enhance standards of care for geoscience done by PEs (through advisory groups or other means).

My Comment Will Be Made Public: I agree