

From: [Sunset Advisory Commission](#)
To: [Brittany Calame](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
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From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Wednesday, August 15, 2018 10:41 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: Vicki

Last Name: McConnell

Title: Executive Director

Organization you are affiliated with: The Geological Society of America

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City: Boulder

State: Colorado

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

Dear Sunset Advisory Commission –

The Geological Society of America (GSA), which represents the interests of more than 20,000 geoscientists, 1,644 of whom reside in the state of Texas, has become aware of the recommendation of the Sunset Advisory Commission to “Abolish the Texas Board of Professional Geoscientists [TBPG] and repeal the Texas Geoscience Practice Act,” which would discontinue Professional Geoscientist Licensure in the state of Texas. We find the proposed discontinuation of the board to be deeply concerning. As geoscientists are responsible for conducting assessments related to infrastructure, contamination, and natural hazards, we believe this action is based on incorrect assumptions and would directly increase risk to public safety for all Texans, among other negative impacts. We would like to offer the following counterarguments in response to points raised in the 2018-2019 staff report.

“The Board’s regulation does not provide meaningful public protection.”

GSA asserts that public safety is one of the most important reasons for professional licensing of geoscientists. As noted in GSA’s position statement *The Role of the Geoscientist in Building and Maintaining Infrastructure*

(https://www.geosociety.org/documents/gsa/positions/pos5_Infrastructure.pdf),

which was adopted in October 2014, “licensure requirements promote technical consistency in the profession as well as reinforce best practices to ensure public safety and welfare.” The GSA notes that the TBPG’s Statute and Rules are designed to promote advocacy on the behalf of the public by ensuring that those geoscientists who work within the public domain meet a minimum standard of competency and expertise - including passing examinations designed to measure the capacity for professional practice within the geosciences field.

“Far reaching exemptions means much geoscience remains unregulated, without a negative effect on the public.”

The report indicates that resulting compromises with other industries and professional areas that are germane to the geosciences diminish the impact and relevance of licensure. Numerous exemptions are another reason cited in the

report for abolition of the agency. However, most of the exemptions that are provided for are to decrease unnecessary regulatory burden for situations in which oversight is achieved by other means. For example, some industries, notably petroleum and mining, conduct their activities within their own domains (i.e. properties and leases) and do not engage in activities directly related to public safety, health, and welfare. The activities related to energy and mineral exploration/production are generally overseen by Federal and State government agencies who are better equipped to provide the appropriate regulatory oversight and enforcement, providing a mechanism for liability and accountability within those realms. Likewise, individuals engaged in teaching and academic research, and employees of government agencies, should be exempted, since they are not working for profit but rather for the benefit of the public.

“The public is not the primary consumer of most direct geoscience services.” The GSA contends that is the members of the lay public who receive the most benefit from the services of a licensed professional geoscientist, albeit often indirectly. Inadequate knowledge of subsurface geology and soil conditions can lead to significant harm to the public and can be avoided by continuing to reinforce best practices and consistency. As stated in the aforementioned GSA position statement,

“Geoscientists are essential in the planning, design, and construction stages of infrastructure, and its maintenance and modernization in many ways:

(1) characterization of subsurface geological conditions with respect to their effect on the design, construction and on-going sustainability of infrastructure projects; (2) planning for new infrastructure and the assessment of existing infrastructure, with respect to environmental impact, natural resource availability, and the incorporation of regional and site-specific natural-hazard analysis; (3) evaluating and monitoring construction methods in high risk areas (for example: unstable slopes, high water table, sensitive soil conditions); and (4) continual monitoring of potential geologic hazards and environmental conditions in sensitive and critical facilities (e.g., power plants, dams, landfills).”

The licensed geologist has a higher level of accountability than a non-licensee and therefore is compelled to provide a more competent level of service and demonstrate the highest level of integrity in their application of the science. Groundwater modeling and availability are also an important aspect of geology that benefits all Texans, and must be projected out decades by competent hydrogeologists to ensure sufficient water resource availability. Whether for infrastructure, environmental remediation, hazards, groundwater availability, or other uses, licensing is especially important in the geosciences because changes on a geological scale often take longer to manifest.

“The Board takes no significant enforcement action.” A review of the comments by the Commission suggests that the Board rarely encounters gross or severe violations of their code. In contrast to the Commission’s assertion that this is a deleterious finding, this might also suggest that the majority of licensed geoscientists are practicing in a responsible and ethical manner according to the TBPG Licensure Code. The Board’s actions suggest progressive enforcement as most offenses are first time and primarily related to registered firms or licensees who are lax in reporting their licensee status. The fact that the Board “self-initiates” the bulk of its complaints suggests that it conducts frequent audits (especially as it pertains to continuing education) of its licensed community (as it should) in order to ensure a measure of safety on the behalf of the public.

“Even though a large majority of current licensees were grandfathered into the profession without full assurance of minimum competency, no substantiated competency complaints exist.” Grandfathering provisions are common with most professions and are simply a reality of implementing licensing on an entire profession. Contrary to undermining the assurance of competency in professional practice, it is a way to impose a new high standard of accountability on a profession. Since the end of the grandfathering period, it is a requirement that all applicants for licensure be required to pass the National Association of State Boards of Geology (ASBOG®) exams. Now that this standard is in place, the number of professionals who have been grandfathered in will continue to drop as those professionals retire.

“The licensee population is steadily declining.” The Commissions review indicates that an aging population will likely add to the increasing decline in the coming years as geoscientists retire. This is not a reason, however, to obviate licensure of geoscience professionals in Texas. It makes it all the more imperative that licensed geoscience professionals be available to address the geoscience needs in the coming years. As of August 10, 2018, 39.1% of the registered GSA members who reside in the state of Texas are either students or early-career professionals. These young professionals entering the workforce should have the opportunity to hold a Professional Geologist License to

prove they are accountable to the public and liable for the work they will perform over their careers.

“Other state agencies provide more direct and robust evaluation of geoscience work than the board.” Arguably, other Texas state agencies may have the professional staff to evaluate products and reports prepared by a geoscientist and provide disciplinary actions to correct deficient work; however, there is no direct enforcement authority or ability to hold a geoscientist accountable for negligence or malfeasance. Are the administrative procedures and resources of a State agency sufficient to expedite legal matters to the Attorney General’s office? The existence of a geologist Licensure Board facilitates this process as there is less bureaucracy that would normally impede review. Discontinuing the TBPG would place unnecessary burden on all levels of government.

“Less restrictive means exist to ensure safe practice of geoscience.”

While the commission indicates that alternatives to licensure such as certification and registration offer “no clear public protection,” it suggests this very course of action in a succeeding paragraph. The Commission asserts that some professional organizations provide certification to geoscientists “who meet qualifications that are similar to or, in some cases, more stringent than current state requirements.” Relying on other credentials such as membership to professional societies and work experience does not provide adequate standards for vetting of geoscientists. Certifications conferred by professional societies and associations may or may not entail examinations and are not designed or authorized to act as regulatory agents, but rather to establish professional credentials. The ASBOG® examination process, which is utilized in all states and territories that have geologist licensure, is specifically designed to gauge a candidate’s capacity for professional geoscience practice. Licensure, which is supported by statute, specifies the standards and provides an enforceable mechanism for accountability.

“Just over half of the states regulate the practice of geoscience or geology, while all states regulate engineers and architects.” The Commission contends that the broader presence of licensure in the professions of engineering and architecture is considered to be more germane and relevant to the safety and welfare of the lay public than the practice of geology.

Geoscientists work alongside licensed engineers and other professionals to improve various types of infrastructure, including structures and utilities that “provide services and resources essential to maintaining the health, safety, and sustainability of communities,” according to GSA’s position statement. Licensed geoscientists often provide the supporting science in a number of (civil) engineering projects. It is also noteworthy that licensure in the geosciences is still growing. The concept of licensing geologists is relatively new, while licensure in the engineering sciences has been around for many decades. This should in no way detract from the need to ensure competent and ethical practice in the science of geology. To the contrary, geoscience expertise provides critical insight on surface and subsurface conditions that is vital for effective engineering practice. The participation of a licensed geoscientist greatly improves risk assessment, informs the selection of appropriate design standards, and ultimately leads to better safety outcomes in the built environment.

We respectfully offer this letter to the Sunset Advisory Commission. Should the Commission require any additional information, please contact GSA’s Executive Director, Vicki McConnell, at vmcconnell@geosociety.org.

Any Alternative or New Recommendations on This Agency: The Texas Board of Professional Geoscientists should not be abolished and should continue to oversee Professional Geoscience Licensure in the state of Texas.

My Comment Will Be Made Public: I agree