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 12:13 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

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Your Comments About the Staff Report, Including Recommendations Supported or Opposed:
Several questionable points were raised by Commission Staff as justification for recommending sunset/dissolution of the Texas Board of Professional Geoscientists (TBOPG).

For the record, I am a Texas-licensed Professional Geologist and manage (for my employer) environmental assessment/remedial efforts overseen by Texas-licensed Professional Geoscientists.

I am OPPOSED to sunset of the TBOPG. My reasons for being opposed are included in my comments on the Staff points below.

1. No complaints have been brought by the public, and history shows that there was no demand from the public to create the agency in the first place.

While I recognize that no group of professionals can practice without error or omission over time—it is my opinion that this Staff point actually confirms the effectiveness of TBOPG's program. Further:

a. Did the public request the creation of TDLR licensing requirements for Auctioneers, Career Counselors, Talent Agencies or Court Interpreters? Did the public request the creation of the Texas Board of Architectural Examiners?

2. There has been no measurable impact of Geoscientist licensing on public protection.

a. It is inherently difficult to point to measurable impacts in geoscience that occur on a rapid time scale. There are certainly areas where catastrophic events do occur with bad (or

inadequate) geoscience work (subsidence, sinkhole collapse, geotechnical problems, etc.). Just this year, a previously unmapped cavern opened up and threatened a residential neighborhood in Round Rock (http://texashillcountry.com/cave-opens-up-swallows-road-in-round-rock-neighborhood/).

In the world of water availability, impacts can take decades to develop.
Unlike a bridge or building collapse that one can clearly point to, geologic impacts are inherently slow-moving. The public is entitled to standards of practice of geoscientists that REQUIRE the public's interests are evaluated and considered in geoscience work regardless of the time scale of impact.
Remove the license and there is no vehicle to keep the public's interests at the forefront of geoscience work, nor a mechanism to police or keep out bad actors.

b. Geologists have been involved in nearly all areas of water-resource planning, management, and development for many years, especially since the passage of Senate Bill 1 in 1997. Geologists (hydrogeologists) have been developers of conceptual and numerical models of groundwater flow systems and groundwater availability, as required by the State for all of Texas' water-planning regions. This work has been fundamental to the State's development of strategies to ensure that groundwater will be a sustainable resource for all Texans over the next 50 years. ALL Texans are beneficiaries (direct and indirect) of this work by geologists.

c. Furthermore, geologists assume leading roles in assessments of soil and groundwater contamination, remediation of contaminated sites, and in the assessment of sites for the disposal of municipal and hazardous wastes, including radioactive wastes. There is also the work of qualified geologists with respect to assessments of coastal subsidence and erosion, and the stability of substrates for construction of roads and large private and public-works projects.

3. The Board was not established in the first place to protect the Public, but primarily "to legitimize the profession" and to protect Geoscientists from the engineers and from untrained competitors.

a. Even if this statement is true in some respects, the report should recommend ways to improve meaningful enforcement--rather than dissolve the agency and remove the legally-mandated standards of geoscience practice.

b. This sounds more like an uninformed opinion or gossip--than anything based on a reasonable grasp of factors that motivated geologists to seek licensure in Texas. It is difficult to respond to the above comment without reference to specific factors that Sunset Commission's staff considered in its report to the Commission.

c. In negotiations with engineers in 2001, it was noted that there is a clear need to partition "risk" on projects involving geological and engineering components. In a document produced in support of the licensure effort, proponents cited many instances of geologically-induced failures of engineering projects… all of which have had great significance for public safety, health, and welfare.

d. Licensing geologists would remove engineers from liability for failure traceable to geological factors for which engineers do not have the background/experience to render professional assessments. The objective was not to "protect geoscientists from engineers"--but to add the perspective of the geologist, along with the assumption of liability by (perhaps) better qualified professionals.

e. With respect to protection from "untrained competitors"--that is what licensure in any area of professional services is intended to ensure.

4. Almost no geologists deal directly with the public – our clients are mainly organizations. Therefore licensing is not necessary for public protection.

Geologists deal with a broad cross-section of clients in the public and private sectors. Both public-sector and private-sector clients seek services from qualified professional geologists, especially where such services involve:

a. reports submitted to local, county, and state agencies;

b. in matters involving assessments of investment for development of land and energy or mineral resources; the valuation of groundwater for development of public supply;

c. or assessments/remediation of public and private lands contaminated with pollutants. The PG credential clearly identifies the individual who assumes responsible charge for such work and ensures that all such work is conducted in accordance with established professional standards.

5. There are too many (50%) Texas geologists who are exempted from the requirement to get a license.

When proponents wrote what became the geoscientist licensure bill, they adopted the exemptions that were granted by all other states at that time. In all such cases, geologists whose work did not involve matters of public safety, health, and welfare were exempt from regulation. This included geologists employed in mining, in oil and gas exploration and development, and geologists employed by state or national agencies such as the US Geological Survey, the US EPA, the US Bureau of Land Management, etc. The number of geologists working in the oil and gas industry of Texas is not a factor that should bear any weight in the assessment of geoscientists' licensure program because they are, by definition, not involved in matters of public safety, health, and welfare. Licensed Geoscientists who work in the private sector and who deal with the effects of oil and gas, mining, construction, etc. bear that public safety responsibility.

6. No meaningful enforcement action over the life of the Board.

I think the one enforcement action cited by Staff actually demonstrates a process that works--albeit imperfectly. There was clearly a report of misconduct in the case, and the board considered the evidence and took an action. In the example action cited, there was no criminal conviction or indictment. Absent the PG Board notice of probation, would anyone know of this infraction? Staff may feel that the sanctions taken were insufficient, but disliked outcomes don't make the agency and its mission invalid or unnecessary. Instead, Staff and/or the Commission should make recommendations to improve TBOPG's enforcement methods and performance standards.

7. More direct oversight of geoscientists' work is provided by other state agencies' (Texas RRC, TCEQ), which renders ongoing state regulation of geoscientists unnecessary to protect the public.

The PG credential establishes a common (that is, across the board) basis for assessing the qualifications of geoscientists to assume LIABILITY for work conducted for clients in the private sector and in the public sector. This eliminates the necessity of defining fundamental credentials on an agency-by-agency basis. It does not eliminate the ability of an agency to require additional certification for specific objectives.

8. 78% of CURRENT Texas PGs were Grandfathered, therefore did not take ASBOG, therefore there is no guarantee that they are, in fact, well-trained.

a. Grandfathering is a fact of life for any licensing program enacted by any state. This was a central factor in our discussions when the licensure bill was written in 2001. The standards for qualification as a grandfathered licensee or as a future applicant for licensure were based on the certification requirements established in 1963 by the American Institute of Professional Geologists (AIPG). In fact, all PG licensure programs established after 1963 are based on AIPG standards. Grandfathered geologists in Texas were typically practitioners who had accumulated years of experience well in excess of the AIPG standard in the public sector or in the private sector, and many held advanced degrees.

b. The point ignores the reality of implementing a license in 2001 on an existing profession and its practitioners. Proponents and the Legislature fully understood this was going to be the case initially, but would change over time. Those statistics involving grandfathered licensees will be flipped in the next 20 years as practicing grandfathered geologists retire. Also, note that in order to be grandfathered there was minimum standards of education, experience, and professional and personal references in addition to other standards

that had to be satisfied. As a grandfathered licensee, I can attest that there was a significant level of vetting required.

9. The licensee population is steadily declining, from 6,600 in 2003 to 4200 in 2017.

The decline in PGs from 6,600 to 4,200 between 2003 and 2017 is likely attributed to grand-fathered geoscientists dropping their license or retiring. From 2009 to 2018, the number of PG's older than 65 has increased from 301 to 808 indicating greater than 20% of the current PGs are nearing retirement age. Approximately 1,400 geologists didn't renew their license during 2007-2008 because they had been laid off and had to cut back on their expenses. Since they were exempt from the regulation (because they were in O&G field), they didn't renew their license. As of 2018, 2,632 PGs are older than 55, which accounts for greater than 65% of the licensed geoscientists in Texas. New PGs are not currently replacing retiring geoscientists at a sustainable rate due to the significant downturn in the geoscience industry following the downturn in the oil and gas industry in 2014. This caused a decline in available job opportunities as well as a decline in applied geoscience enrollment in universities.

10. Less restrictive means exist to ensure the safe practice of geoscience (i.e. certification by AIPG, AEG, AAPG, etc.).

None of the above-listed organizations has statutory authority to enforce continuing education requirements or disciplinary actions on geoscientists in Texas or in any other state. They exist to establish credentials for professional certification for members of different voluntary organizations, not to act as regulatory agents for the state.

11. Only "Just over half of the states regulate the practice of geoscience or geology, while all states regulate engineers and architects."

The first state to regulate engineers was Wyoming in 1907. The last was Montana, in 1947. It took 40 years to get 100% participation. These things don't happen overnight. As of 2018, 32 states and the protectorate of Puerto Rico regulate the practice of geoscience. This is 65 percent of the 50 states and Puerto Rico--which is a bit more than "just over half". States which have chosen not to regulate the practice of geology have done so for reasons unrelated to those of the 32 states and Puerto Rico (e.g., small numbers of geologists working in private practice related to public safety, health, and welfare). Reasons unrelated to factors that drove the Legislature of Texas to enact the geoscientist licensure bill in 2001. Texas is in charge of its own affairs and of its own destiny. It need not look to decisions elsewhere to decide how to regulate professions in Texas.

Any Alternative or New Recommendations on This Agency: Recommend that the Texas Board of Professional Geoscientists be retained.

My Comment Will Be Made Public: I agree