ASBOG® *National Association of State Boards of Geology*

August 16, 2018

Erick Weiland, P.G.
5531 E. Kelso St
Tucson, AZ 85712

RE: SUNSET ADVISORY COMMISSION STAFF REPORT
TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
AUSTIN, TEXAS

Dear Senator Birdwell:

The National Association of State Boards of Geology (ASBOG®) respectfully submits information contained within this document in response to the Texas Sunset Advisory Commission August 2018 Sunset Staff Report recommending that the Texas Geoscience Practice Act be repealed and the Texas Board of Professional Geoscientists (TBPG) be abolished. ASBOG® is a not-for-profit organization that serves as a connective link among the individual state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologist. The TBPG uses these uniform examinations as a valid measure of competency related to the practice of the profession.

The following components are included within this submittal for your consideration:

- Executive Summary
- Letter Report
- Attachment I- Analysis of Sunset Review Committee Findings: ASBOG® Response
- Attachment II- Professional Geology Licensure Examination Development Procedures

ASBOG® was one of the stakeholders solicited by the Sunset Staff during the review process. We believe that some of the information ASBOG® provided during the review was not given sufficient consideration regarding the significant value that geologic licensure brings to the public. We respectfully request that you critically review the information provided in this submittal and give careful consideration to our recommendation to keep the Geoscience Practice Act. We will also be attending the Public Hearing scheduled for August 29 and 30, 2018, and look forward to having opportunity to further impress upon the Commission the need for professional licensure of geoscientists in Texas.

Sincerely,
NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY

Erick Weiland, P.G.
ASBOG 2018 President

cc: Deana Sneyd, P.G.
Executive Director

Post Office Box 5219
Douglasville, Georgia 30154

email: dsneyd@asbog.org
www.asbog.org

Voice: 678-713-1251
Fax: 678-839-4071

Executive Summary

The Texas Sunset Advisory Commission (Commission) has released a preliminary Staff Report that recommends abolishment of the Texas Board of Professional Geoscientists (TBPG) and repeal of the Texas Geoscience Practice Act. The National Association of State Boards of Geology (ASBOG®) strongly urges the Commission to reconsider, at a minimum, the repeal of the Geoscience Practice Act; and recommends that the Commission provide opportunity for the TBPG to improve operational function through appointment of an Executive Director with knowledge and experience related to the public practice of geology, or consider other alternatives such as integration in process and practice with other technical boards.

It is important to have competent and ethical geologists providing multifaceted geological services to meet our public needs – with the term "public" representing collections of businesses, communities and individuals. The types of services performed in the public practice of geology can, and do, impact the public's health, safety and welfare as well as the environment. Through professional licensure, minimum standards are required of practitioners, and liability related to poor practice can be assessed and reprimanded. Although not all states regulate the practice of geology, licensure in thirty-one states and Puerto Rico protects nearly 80% of the citizens currently residing in the United States. Regulation of the geosciences comes at no cost to the public in Texas and provides significant advantages and protections: this is the cheapest insurance policy a state could provide for its' citizens.

Alternatives to geologic licensure in Texas presented in the Sunset Commission Staff Report will have negative unintended consequences: 1) to government at the local, regional and state level; 2) to private and public businesses; and 3) to geologic practitioners. National and local associations, such as the American Institute of Professional Geologists (AIPG) and the Texas Association of Professional Geologists (TAPG) are not appropriate substitutes for professional oversight; every action by the TBPG is concerned with protecting the public, whereas private associations are designed to support and promote the individual practitioner. Oversight by other governmental agencies will require additional staff and budget. Given there will be no assurance of minimum competence that comes with licensing, liability for poor practice will fall back on the state; furthermore, oversight does not equal enforcement. Many businesses are aware of the skills, services, and knowledge which professional geoscientists offer, and they are demanding that practitioners be licensed as an assurance for competent and ethical work. Absence of licensure in Texas will put Texas geoscientists and businesses at an economic disadvantage when seeking professional mobility for work in other states as well as pursuing federally-funded state and municipal projects in Texas that require licensed geoscientists.

The Texas Geoscience Practice Act and TBPG have provided legislative and operational blueprints for other state geology boards since 2001. If the Commission is interested in improving and strengthening the Geoscience Practice Act, exemptions to licensure should be removed. If the Commission is interested in improving functionality of the TBPG, appropriate staffing and/or combination with other technical profession(s) would be appropriate as is done in other licensure states. Professional licensure of geoscientists is an embedded part of the professional services in Texas and an increasing number of states; its elimination in Texas would have significant repercussions large and small, not fully considered in the Commission's report.

1. Introduction

The Texas Sunset Advisory Commission (Commission) has released a preliminary Staff Report that recommends abolishment of the Texas Board of Professional Geoscientists (TBPG) and repeal of the Texas Geoscience Practice Act based on the question: ***need for and effectiveness of state regulation and the agencies that perform this regulation***. The staff acknowledged the *"valuable assessments and research related to groundwater, subsurface concerns, and other areas"* but appeared to neglect the significant need for collaboration with contractors, engineers, surveyors, and architects (all requiring licensure) to provide the necessary safeguards to protect the health, safety, and welfare (including financial) of the public. In addition, the Sunset report indicated that the TBPG generates revenue through licensing fees in excess of expenditures and, as such, is self-funded. Our organization, The National Association of State Boards of Geology (ASBOG®), has provided feedback to each of the findings in the Staff Report, which are included as Attachment I to this letter.

ASBOG® serves as a connective link among the individual state geologic registration/licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principle services is to maintain two legally defensible technical examinations that the TBPG and other state geologic licensing boards administer to applicants to, in part, evaluate and document the competency of each applicant. The ASBOG® examinations, as well as our process that ensures their rigor, supports a state's issuance of a license, and then facilitates the acceptance of licenses between states by reciprocity (see Attachment II). Our experience motivates our response to the Commission as we believe the Staff Report's summary and conclusions overlook or omit significant information that, if included, would instead recommend continuation of the Geosciences Practice Act and improvements to, not abolishment of, the TBPG. We strongly urge you to reconsider and maintain the current robust and proven process for governing the licensure of geoscientists in the state of Texas.

2. Recommendation

The National Association of State Boards of Geology strongly urges the Commission to reconsider, at a minimum, the repeal of the Geoscience Practice Act. Additionally, in lieu of abolishing the TBPG, we recommend that the Commission consider retaining the current TBPG, strengthening its regulatory enforcement capabilities and/or consider combining this Board with the Texas Board of Professional Engineering (TBPE) to further allow economy of scale and provide the necessary oversight and uniformity of enforcement.

3. Benefits of Geologic Licensure

Why should geoscientists be licensed? Nationally, licensure has been shown to protect the public health, safety and welfare (including financial) of the public. Without it, the only recourse against untrained or inadequate performance is through civil courts. Much of today's geological practice directly affects the health, safety and welfare of the public, the environment, and the economy and feasibility of engineered/constructed works. Professional geologists working with others (engineers, surveyors, architects, and contractors at the local, state and federal level) apply sound geologic knowledge, experience, and procedures that will serve to protect the public and the environment.

Geoscientists use their special knowledge and expert experience for the benefit of the public in a variety of market sectors, including:

- Financial and public documents (economic- and energy-resources such as mining and oil/gas),
- Water projects (groundwater supply/declines, water recharge/storage, pipelines, and canals),

- Geological hazards (faults and fissures, landslides, foundation stability for buildings, dams, bridges and roadways, swelling soils, and karst systems),
- Environmental liability (spring flows, contaminated soil, injection wells, and groundwater quality),
- Public and private construction design (highway, dams, bridges, sub-divisions, subsidence issues), and
- Other areas of professional work.

All of these have the potential to directly, or indirectly, affect the health, welfare, and safety of the public if not properly recognized and accounted for by qualified geoscientists. There is a difference and necessity of a geological approach over a strictly engineered approach to understanding and managing professional work. There are tasks in which only a trained geoscientist has experience and therefore may have significant impacts on local citizens. Few other professions affect the public more than geology, especially in collaboration with the drilling, construction and engineering professions. Any professional geologic work potentially affecting the public needs to be "stamped" by the professional geoscientist, which represents his/her commitment and acceptance of the liability for the most accurate report possible.

Success on federal projects within the state may also be at risk without the licensure of geoscientists (interstate highways, storage tank remediation, federal remediation projects under the US-EPA, dams and bridges under the guidance of the US Army Corps of Engineers, and other federal agencies). Without the ability to seal reports, unlicensed geoscientists and/or geoscience businesses may not be able to obtain federally-funded projects to include water supply, dams, bridges, and highways. Even the Railroad Commission of Texas and the Texas Commission on Environmental Quality require that geoscientists be licensed to prepare and submit well logs and reports – a direct benefit and protection of the public.

4. Relationships between the geologic profession and other professions

Geoscientists and engineers/architects generally work in collaboration to ensure that all natural and man-made influences are considered during a project or setting. Geoscientists are trained to consider the entire physical environment, the materials that compose it (rocks, soils, and water) and the dynamic physical and geochemical processes that drive it. Engineers/architects are primarily concerned with facility design including material and structural properties along with construction and constructability considerations. For public protection, persons can only certify geological work for which they were trained in the fundamental geologic principles and have the necessary experience. Geoscientists are trained and have experience in geologic interpretation of earthen materials while engineers/architects are trained and have experience in designing, properties of materials, and construction.

Geoscientists interpret while engineers design and build. Geoscientists investigate earth materials and processes and advise how to compensate for those conditions to assure safety. Engineers take this information, and working with geoscientists and others, determine how to design and build safe structures in a cost-effective manner. *These are distinctly different professions which bear distinct liability.* Because of the close relationship between those who interpret, and those who design and build, geoscientists and engineers/architects must work together in a collaborative fashion.

5. Examinations

Many people falsely claim that the use of an examination as a requirement for licensure is unnecessary and only used to limit membership. This claim appears to be supported by the fact that a geoscientist must have a 4-year college degree, have sufficient work experience, and be sponsored by their peers and supervisors for licensure. History, however, shows that a 4-year college degree and recommendations by peers and supervisors vary widely and do not satisfactorily prove that a candidate has the academic

preparation or understanding of geology necessary to properly practice geology that affects the public or the environment.

The Texas public can currently rely on the services of state-licensed geoscientists based on its licensure program and a system of examinations maintained by ASBOG®. To become a Licensed Professional Geoscientist in Texas, an applicant must obtain a degree in Geosciences, successfully complete two examinations, accrue a specified number of years of experience under a responsible Licensed Professional Geoscientist, and provide recommendations from several Texas Licensed Professional Geoscientists. The nationally-administered examinations that are required for licensure in Texas include the *Fundamentals of Geology,* which tests fundamental geologic knowledge, and the *Practice of Geology*, which tests experience in practicing the science and art of geology. These examinations, as well as all licensure examinations, are designed to uniformly measure minimum competency in the specific content areas identified as the standard of practice for geology throughout the Country necessary for the protection of public health, welfare, and safety. These examinations serve as a uniform screening tool for assessing applicant qualifications – those who do not successfully complete these examinations can be viewed as lacking the competence to practice geology. Upon licensure, professional geoscientists can then offer geological expertise as a service to the public in the state, while also accepting liability for their work. Without the national system of standardized tests that are offered to applicants in states with laws and regulations that screen the qualifications of applicants, any person, competent or otherwise, could claim geoscience expertise and sell their services to the public with little or no associated professional liability.

Use of the ASBOG® exams by state Boards reduces regulatory barriers to professional mobility that makes it easier for individuals/businesses in one state to bid on work in other states. Texas Professional Geoscientists and the businesses they own or work for would be at a competitive disadvantage (and therefore suffer economically) when bidding on work in which licensure is required if there is no professional licensure offered Texas. If there is no licensure in Texas, geoscientists will not have taken the ASBOG® examinations as part of their licensing requirements. In order to become licensed (and retain the competitive advantage of taking the ASBOG® examinations for professional mobility), Texas geoscientists will have to travel to out of state to take the examinations, and pay licensure fees in that state (funneling that money outside of Texas).

6. National Trends in Licensure

To repeal licensure of geoscientists in Texas would be contrary to the current trend where more and more states are requiring licensure of geologists. Thirty-one states plus Puerto Rico currently require licensure, which represents nearly 80% of the population of the United States. In short, states protect the public through licensing the practice of geology by assuring that practitioners are and remain qualified. Reciprocity among participating states contributes to a strong regional and national network – interestingly, some states have even used the Texas legislative and operational blueprints for licensure when developing their own laws. In addition, by having a licensure requirement and administering the license under the TBPG, there is a clear process and remedy for the public to obtain justice should a licensee not provide services to its citizens in a competent manner. Remedies may include revocation of the individual's license and denial of their ability to practice within the state. Other state agencies do not have enforcement authority with regard to assessing professional liability to individual practitioners. Without licensure, there would be no process for technical oversight or public recourse except by establishing harm and liability with subsequent demands for compensation through the judicial system, further clogging our court system and relying upon judges who may lack the technical knowledge to properly assess the case, be influenced by other political motives or other public members to make critical technical determinations regarding geologic conditions.

7. Summary

We have provided the above information, and response to the Commission's findings in Attachment I, for consideration by the Commission as it completes its Sunset review of the TBPG. We encourage the Commission to consider all facts and information from multiple perspectives offered in this response. We strongly suggest the Commission reverse the current recommendation in the Staff Report to repeal the Texas Geoscience Practice Act. We also recommend that the Commission reconsider their recommendation to abolish the Texas Board of Professional Geoscientists, and instead recommend the Board be extended and strengthened, including through closer integration in process and practice with other professional boards, particularly that for the engineering disciplines. We believe risks at the local and state, business and individual citizen level are best managed through a coordinated process of licensure and oversight that recognizes, encompasses and integrates all critical areas of expertise.

We look forward to offering testimony at the Commission's upcoming hearing on this matter. Please do not hesitate to contact myself or ASBOG® through our Executive Director, Ms. Deana Sneyd, P.G., at dsneyd@asbog.org (678) 713-1251 or erickweiland@gmail.com.