

- SUBJECT:** Continuing the Texas Board of Professional Geoscientists
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 8 ayes — T. King, Goldman, Harless, Hernandez, Herrero, Kuempel, Paddie, S. Thompson
- 0 nays
- 3 absent — Geren, Guillen, K. King
- WITNESSES:** For — John Tintera, Texas Alliance of Energy Producers; Richard G. Howe; Robert Mace; Carolyn May
- Against — Arif Panju, Institute for Justice; Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify:* Jeremy Dumoit; David Waldrop)
- On — (*Registered, but did not testify:* Morgan Constantino, Sunset Advisory Commission; Wesley McCoy and Rene David Truan, Texas Board of Professional Geoscientists)
- BACKGROUND:** The 77th Legislature established the Texas Board of Professional Geoscientists in 2001. It is governed by Occupations Code ch. 1002. The board's mission is to protect public health, safety, welfare, and the state's natural resources by ensuring only qualified individuals carry out the public practice of geoscience.
- Functions.** The board's key duties include:
- licensing qualified geoscientists and registering geoscientists-in-training and geoscience firms;
 - investigating and resolving complaints and taking disciplinary action when necessary to enforce the board's statutes and rules;
 - conducting outreach to and education events for the public;

- informing other state agencies about relevant statutes and rules; and
- providing information on how to report violations to the board.

Governing structure. The board is made up of nine members appointed by the governor. Six members must be licensed geoscientists and three members represent the public.

Funding. Funding for the board is primarily generated from professional geoscientist licensing fees and administrative penalties. Historically, the board generates revenue in excess of what is necessary to cover appropriations, and all excess revenue is deposited into the general revenue fund. In fiscal 2017, the board generated revenue of \$944,422 and deposited excess revenue of \$234,381 into the general revenue fund.

Staffing. The Board of Professional Geoscientists employed a total of six staff members in fiscal 2017.

The Texas Board of Geoscientists would be discontinued on September 1, 2019, if not continued in statute.

DIGEST:

CSHB 1311 would continue the Texas Board of Professional Geoscientists until September 1, 2025, and would adopt certain new and standard recommendations from the Sunset Advisory Commission.

Licensing requirements. CSHB 1311 would remove the requirements that applicants for a professional geoscientist license have their application forms notarized, submit five letters of recommendation, and be of "good moral and ethical character." The bill would deem any statement made by a person who provided information to the board relating to an applicant as privileged and confidential.

An application for a license filed before the effective date of the bill would be governed by the law in effect at the filed date.

Administrative penalty. CSHB 1311 would increase from \$100 per day to \$1,500 per day the maximum administrative penalty against a licensed

geoscientist found in violation of any of the provisions of Occupations Code ch. 1002. The penalty would apply only to conduct that occurred on or after the effective date of the bill.

Board selection. The bill would require the governor to designate a member of the board as the presiding officer to serve at the discretion of the governor. The board would be required to elect biennially from its own membership an assisting presiding officer who could serve for a maximum of two consecutive biennia and be removed by a two-thirds majority vote of the board.

Board member training. The bill would require the board to expand its existing training program to provide information on:

- law governing board operations;
- the board's programs, functions, rules, and budget;
- the scope of and limitations on the rulemaking authority of the board;
- the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law by limiting competition or impacting prices charged by professionals or businesses the board regulated; and
- the requirements of laws relating to open meetings, public information, administrative procedure, disclosure of conflicts of interest, and other laws applicable to members of a state policymaking body in performing their duties.

The executive director of the board would create and distribute a training manual with all the information listed above to each member of the board. Each member would be required to confirm to the executive director that they had received and reviewed the manual.

A board member could not vote, deliberate, or be counted in attendance at a board meeting held on or after December 1, 2019, until the member completed the necessary training.

Alternative dispute resolution. CSHB 1311 would require the board to develop a policy encouraging the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures in accordance with the guidelines issued by the State Office of Administrative Hearings. The board would be required to coordinate the implementation of, provide training for, and collect data concerning the effectiveness of the procedures.

Complaint system. CSHB 1311 would require the board to maintain a system to promptly and efficiently act on complaints filed with the board. The board could employ or contract with certain experts to provide technical assistance in investigations and disciplinary proceedings. Such experts would be immune from civil liability except for actions involving fraud, conspiracy, or malice.

Effective date. The bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSHB 1311 would allow the Texas Board of Professional Geoscientists to continue to positively impact public health, safety, welfare, and the state's natural resources. It also would decrease barriers to entering the profession and standardize the board's complaint system.

Public protection. CSHB 1311 would ensure the board continued to guarantee that practicing geoscientists possessed the education and experience needed to effectively execute their vital work. Geoscientists perform an array of services, including environmental site assessments, fault studies, and groundwater resources studies. Much of their work involves the protection of groundwater and soil. The Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission (RRC) also rely on geoscientists for accurate and professional assessments. The bill would allow the board to continue licensing geoscientists who protected groundwater and subsurface soil by properly remediating and reporting to the TCEQ and RRC.

The bill appropriately would preserve certain exemptions in existing law for grandfathered licensees or geoscientists conducting activities that did

not impact public health, safety, and welfare. For cases in which the exempt activities caused accidental contaminations, licensed geoscientists still would be required to assess and address contamination properly. The bill would not affect the regulation of those activities.

Licensing. CSHB 1311 would reduce barriers to entry into the geoscience profession by eliminating application form notarization and letter of reference requirements for applicants seeking a license. The bill also would train all board members in rules, interpretations, and enforcement actions that could violate certain laws that limit competition. The bill would ensure all board members reviewed training information by prohibiting them from continuing certain board functions until they completed the training.

CSHB 1311 would not affect or change the board's ability to waive any of the license requirements for applicants who made a written request and showed good cause for seeking a requirements waiver. The bill also would not change an individual's ability to appeal an administrative penalty.

Complaint system. CSHB 1311 would strengthen the board's complaint process by bringing the board into conformity with the Sunset Advisory Commission's standard policies.

OPPONENTS
SAY:

Rather than continuing the Texas Board of Professional Geoscientists for six more years, CSHB 1311 should allow the board to be abolished. The board serves as an unnecessary barrier into the profession, furthers exemptions that result in ineffective licensing procedures, and does not contribute to meaningful protection of the public.

Public protection. CSHB 1311 would allow the unnecessary regulation of geoscience to continue. The Sunset staff report found no examples of significant harm to the public directly attributable to unqualified or substandard geoscience before the board was created. The license is not needed to ensure public safety, as evidenced by the large number of geoscientists exempt from regulation, including those practicing under the grandfather clause or oil and gas exemptions.

Licensing. Although the bill would remove certain application requirements, licensing would remain a barrier to entering the field of geoscience. For example, licensing is available only for geoscientists who hold degrees in certain science fields, impeding the ability of geoscientists with degrees in other fields from competing. Unlicensed individuals may still do some geoscience work but only under the supervision of a licensed practitioner, limiting their ability to open their own businesses.

The regulation of geoscience also poses a burden to military service members. Not all states require a license to practice, so military families moving to Texas from a non-licensing state could encounter difficulties petitioning the board to be exempt from the licensing requirements. The bill also would pose an unnecessary burden for lower-income individuals wishing to enter the field of geoscience due to the application fee for a license and the fines associated with practicing without a license.

Complaint system. CSHB 1311 would add additional requirements to a complaint system that is unnecessary. The majority of licensed geoscientists in the state are grandfathered and practice geoscience without having passed the exam required of new licensees, yet the board has not received a complaint that posed significant harm or risk to the public due to dangerous geoscience practices.