

## **BILL ANALYSIS**

Senate Research Center  
76R14472 SMH-F

C.S.S.B. 129  
By: Brown  
State Affairs  
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Committee Report (Substituted)

### **DIGEST**

Currently, it is estimated that one-third of practicing geologists in the United States reside or claim residence in Texas. Despite this fact, while 26 other states and Puerto Rico have recognized the need to regulate the public practice of geoscience, Texas has yet to pass similar legislation. Geoscientists undertake responsibilities that directly impact the environment as well as public health and safety through the construction of dams, highways, apartments, commercial developments, and petroleum industry-related projects. Topics which involved geologists' skills were responsible for over 200 bills introduced to the 73rd Legislature. C.S.S.B. 129 creates the Texas Board of Professional Geoscientist, which has the responsibility of administering licenses, certificates, seals, and generally regulating the public practice of geosciences.

### **PURPOSE**

As proposed, C.S.S.B. 129 creates the Texas Board of Professional Geoscientists, which has the responsibility of administering licenses, certificates, seals, and generally regulating the public practice of geosciences.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Board of Professional Geoscientists in SECTION 1 (Sections 1.04(j), 2.09, 4.01, 4.03(a), 4.05(a) and (b), 4.06, 6.08(a), 6.13(a) and (b), 6.15, 7.01(c), 8.01(b), 10.03(a), Texas Geoscience Practice Act), of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. ADOPTION OF TEXAS GEOSCIENTIST PRACTICE ACT. Adopts the Texas Geoscientist Practice Act, as follows:

Sec. 1.01. SHORT TITLE: Geoscience Practice Act.

Sec. 1.02. DEFINITIONS. Defines "board," "certified geoscientist," "geoscience," "geoscientist," "geoscientist-in-training," "licensed geoscientist," "performance before the public," "public practice of geosciences," and "responsible charge."

Sec. 1.03. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Professional Geoscientists (board) is subject to Chapter 325, Government Code. Provides that this Act expires September 1, 2011.

Sec. 1.04. APPLICATION OF ACT. Defines "licensed engineer," "practice of engineering," and "professional surveying." Provides that this Act does not authorize professional surveying by a licensed geoscientist. Provides that this Act does not require a licensed engineer to work under a geoscientist's supervision. Subjects certain matters to the Texas Engineering Practice Act. Sets forth provisions for a licensed geoscientist to perform certain engineering duties. Sets forth provisions regarding an environmental and pollution remediation project. Sets forth provisions regarding a geoscientific investigation of geological conditions affecting an engineered work. Requires the board and the Texas Board of Professional Engineers, by rule, to jointly resolve conflicts.

### **SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**

Sec. 2.01. BOARD MEMBERSHIP. Requires the board to administer this Act. Provides that the board is composed of nine members appointed by the governor with the senate's advice and consent. Sets forth provisions regarding specific appointment requirements. Sets forth standard language regarding board appointments.

Sec. 2.02. MEMBER ELIGIBILITY. Sets forth board membership requirements. Adds standard language developed by the Sunset Advisory Commission regarding board membership ineligibility.

Sec. 2.03. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "society or trade association." Adds standard language developed by the Sunset Advisory Commission regarding membership and employee restrictions.

Sec. 2.04. TERMS. Sets forth terms of board appointment and prohibits a member from serving two consecutive full terms.

Sec. 2.05. GROUNDS FOR REMOVAL. Sets forth provisions for revoking board membership. Provides that the validity of board action is not affected by grounds for removal of a board member. Sets forth provisions regarding suspected or potential grounds for removal of a board member.

Sec. 2.06. REIMBURSEMENT FOR TRAVEL EXPENSES. Entitles a board member to certain reimbursements as provided by the General Appropriations Act.

Sec. 2.07. OFFICERS. Requires the board to elect certain officers biennially, and prohibits a member from holding a position for more than two consecutive two-year periods. Sets forth provisions for removal of an officer. Authorizes the board to appoint certain non-board member assistants.

Sec. 2.08. OFFICE. Requires the board to maintain its office in Austin.

Sec. 2.09. MEETINGS. Requires the board to hold two or more regular meetings in each calendar year. Authorizes the board, by rule, to hold a special meeting.

Sec. 2.10. TRAINING. Adds standard language developed by the Sunset Advisory Commission regarding training program requirements for board members.

#### SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 3.01. EXECUTIVE DIRECTOR. Requires the board to appoint an executive director and sets forth responsibilities of the executive director.

Sec. 3.02. RECEIPTS AND DISBURSEMENTS; ACCOUNT. Requires the executive director to account for all money received under this Act and transfer those funds to the comptroller. Requires a special fund called the "professional geoscientists' fund account" to be created for all funds paid to the board. Requires the account to be maintained in accordance with the accounting procedures of the comptroller. Sets forth account spending limitations. Sets forth requirements for the executive director regarding the administration of the account.

Sec. 3.03. SEPARATION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policymaking and management responsibilities of the board, executive director, and staff.

Sec. 3.04. QUALIFICATIONS AND STANDARDS OF CONDUCT. Requires the executive director or the designee to provide board members and employees with information regarding requirements for office or employment, including information regarding an individual's responsibilities regarding standards of conduct for state officers or employees.

Sec. 3.05. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. Requires the executive director or designee to develop an intra-agency career ladder program that addresses

opportunities for advancement. Require the program to require intra-agency posting of all positions concurrently with any public posting. Requires the executive director or designee to develop a system of performance evaluations based on documented performance. Requires all decisions regarding merit pay to be based on that system.

Sec. 3.06. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard language developed by the Sunset Advisory Commission regarding equal employment opportunity policies.

#### SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 4.01. GENERAL RULEMAKING AUTHORITY. Authorizes the board to adopt and enforce rules.

Sec. 4.02. FEES. Authorizes the board to set fees for applicants and license holders.

Sec. 4.03. CODE OF PROFESSIONAL CONDUCT. Requires the board, by rule, to develop a code of professional conduct that is binding on all license holders. Authorizes the board to impose sanctions to enforce the code.

Sec. 4.04. ENFORCEMENT. Requires the board to enforce this Act. Authorizes any board member to present a complaint relating to a violation of this Act. Authorizes the board to assist in the trial of a case involving the violation of this Act. Authorizes the board to administer oaths and affirmations and issue subpoenas to compel witness attendance and the production of evidence. Requires the attorney general to act as a legal advisor to the board and to render necessary legal assistance.

Sec. 4.05. RECOGNITION OF USE OF DESIGNATIONS. Authorizes the board, by rule, to recognize the use of designations used by certain entities that maintain a geoscientist certification program, under certain conditions. Requires the board, by rule, to recognize certain titles.

Sec. 4.06. ESTABLISHMENT OF DISCIPLINES. Requires the board, by rule, to establish the criteria and appropriate requirements for licensure in certain disciplines

Sec. 4.07. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. Authorizes the board to enter into agreements with certain entities to develop uniform standards for certain issues.

Sec. 4.08. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. Authorizes the board to take certain actions in connection with the administration of this Act.

Sec. 4.09. ROSTER OF LICENSE HOLDERS. Requires the board to maintain copies of a roster of each licensed geoscientist, and to provide the roster to certain entities, upon request.

Sec. 4.10. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENT EXISTS. Requires the board to maintain a list of certain entities which maintain comparable requirements to those established in Texas and with which a reciprocity agreement exists.

#### SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 5.01. PUBLIC INTEREST INFORMATION. Requires the board to take certain actions.

Sec. 5.02. COMPLAINTS. Authorizes a person to bring a complaint alleging a violation of this Act, and sets forth requirements for the complaint. Requires the board to maintain a file on each filed complaint. Requires the board to provide the complainant with certain documents. Requires the board to investigate all complaints. Requires the board to follow a certain procedure regarding notification to the complainant.

Sec. 5.03. PUBLIC PARTICIPATION. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

## SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 6.01. LICENSE REQUIRED. Prohibits a person from engaging in the public practice of geosciences without a license. Sets forth prohibitions for a non-licensed person. Prohibits a person from taking responsible charge of certain required reports based on geoscientific study or data unless the person is licensed.

Sec. 6.02. EXEMPTIONS. Sets forth activities which do not require a license.

Sec. 6.03. LICENSE APPLICATION. Requires an applicant for a temporary or reciprocal license to apply on a board prescribed form that is signed and sworn before a notary public. Requires the application to be accompanied by a fee and include certain information.

Sec. 6.04. EXAMINATIONS. Authorizes the board to prepare, administer, and grade oral and written examinations required or permitted by this Act. Authorizes the board to adopt or recognize certain examinations that it determines appropriate to measure the qualifications of an applicant for a geoscientist license, under certain conditions.

Sec. 6.05. LICENSE ELIGIBILITY. Sets forth eligibility requirements for a geoscientist license applicant.

Sec. 6.06. QUALIFYING EXPERIENCE. Requires the board to apply certain standards in the process of evaluating the experience of a geoscientist license applicant.

Sec. 6.07. GRADUATE STUDY, RESEARCH, AND TEACHING EXPERIENCE. Details circumstances wherein graduate study, research, and teaching experience qualify as one year of professional experience.

Sec. 6.08. RECIPROCAL LICENSE. Requires the board, by rule, to authorize the licensure of a person without examination who has certification in a territory outside of Texas. Authorizes the board to issue a license to an applicant who provides proof of licensure or registration under requirements that the board determines to be substantially similar to those established by this Act.

Sec. 6.09. TEMPORARY LICENSE. Authorizes the board to issue a temporary to a person who meets certain qualifications. Sets forth requirements for a temporary license applicant. Provides that a temporary license expires within 90 days of issuance. Provides that a temporary license issued to a reciprocal license applicant expires on the date the reciprocal license is issued or denied.

Sec. 6.10. WAIVER OF REQUIREMENTS. Authorizes the board to waive any of the requirements by a two-thirds vote of the entire board, except for the payment of a required fee. Requires the waived requirements to be recorded.

Sec. 6.11. CONFIDENTIALITY OF CERTAIN INFORMATION. Establishes the confidentiality of certain information regarding an applicant for licensure.

Sec. 6.12. ISSUANCE OF LICENSE. Requires the board to issue a license to an applicant who meets this Act's requirements and who pays the applicable fee. Sets forth requirements for the license. Provides that the issuance of a license is prima facie evidence that the licensee is entitled to certain rights during the term of the license.

Sec. 6.13. LICENSE DURATION; EXPIRATION. Provides that a license is valid for a period not to exceed three years and expires according to a schedule established by board rule. Specifies that the license is invalid upon expiration, and is prohibited from renewal.

Sec. 6.14. SEAL. Requires the licensee to obtain a board established seal. Sets forth requirements for certain records which are prepared or issued by a licensee.

Sec. 6.15. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. Requires the board to issue a new license to replace a license, under certain conditions, subject to rules and fees adopted by the board.

## SUBCHAPTER G. LICENSE RENEWAL

Sec. 7.01. LICENSE RENEWAL. Requires the board to notify a license holder of certain issues within the 60th day before the expiration of the license. Requires the board to renew the license of a license holder who takes certain actions within a certain deadline. Authorizes the board, by rule, to establish conditions and fees for the reissuance of a lapsed, expired, suspended, or revoked license.

Sec. 7.02. CONTINUING PROFESSIONAL EDUCATION. Authorizes the board to require certain continuing professional education requirements.

## SUBCHAPTER H. PUBLIC PRACTICE OF THE GEOSCIENCES

Sec. 8.01. PUBLIC PRACTICE OF THE GEOSCIENCES BY FIRM OR CORPORATION. Sets forth conditions for a firm or corporation to engage in the public practice of the geosciences. Authorizes the board to adopt rules relating to the practice of geosciences by a firm or corporation. Sets forth requirements for such rules. Exempts a firm that engages in the practice of both engineering and geoscience from any firm registration requirements created under this subsection. Prohibits an individual, firm, or corporation from taking certain action which requires a signature or seal of a licensee.

## SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY ACTIONS AND PROCEDURE

Sec. 9.01. DENIAL OF LICENSE. Authorizes the board to deny licensure under certain conditions including: failure to satisfy a requirement, violation of this Act, and an alleged violation in another state. Prohibits the board from issuing a license pending the disposition of a complaint in this or another state, if the board is aware of such an allegation. Requires the board to notify a denied applicant in writing 30 days after the decision and sets forth provisions for a hearing. Provides that the board's action is final in the absence of a hearing request.

Sec. 9.02. GROUNDS FOR DISCIPLINARY ACTION. Authorizes the board to impose appropriate sanctions for certain actions.

Sec. 9.03. DISCIPLINARY ACTIONS. Sets forth disciplinary actions the board is authorized to take. Prohibits the board from imposing a sanction for a ground described by Section 9.02(8) that exceeds in severity or duration the sanction on which the board's action is based.

Sec. 9.04. RIGHT TO HEARING. Entitles a certain person to a hearing.

Sec. 9.05. REINSTATEMENT. Sets forth required procedures for the reinstatement of a license. Authorizes the board to set forth certain requirements as a condition for license reinstatement.

## SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 10.01. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty against a person who violates this Act or a rule or order adopted under this Act.

Sec. 10.02. AMOUNT OF PENALTY. Authorizes the board to include certain costs in the penalty. Prohibits the penalty from exceeding \$3,000 for each violation. Specifies that each day a violation continues constitutes a separate violation. Sets forth issues the amount of penalty is required to be based on.

Sec. 10.03. PROCEDURAL RULES. Requires the board to adopt rules of procedure for the imposition of an administrative penalty. Requires such rules to conform to the requirements of Chapter 2001, Government Code.

Sec. 10.04. OPTIONS FOLLOWING FINAL ORDER: PAY OR APPEAL. Requires the person to take certain actions by the 30th day after the board's order becomes final. Authorizes the person who acts under Subsection (a)(3) to take certain actions within the 30-day period. Authorizes the executive director to file a contest to the affidavit, under certain conditions.

Requires the court to hold a hearing, and stay the enforcement of a penalty, while finding that the alleged facts are true. Provides that the affidavit filer has the burden of proving that the person is financially unable to pay the penalty and to give a supercedas bond.

Sec. 10.05. COLLECTION OF PENALTY. Authorizes the executive director to refer the matter of penalty collection to the attorney general, under certain conditions.

Sec. 10.06. STANDARD OF JUDICIAL REVIEW. Provides that the board's order is subject to judicial review under the substantial evidence rule.

Sec. 10.07. REMITTANCE OF PENALTY AND INTEREST. Authorizes the court to order payment of a penalty, or order that no penalty is owed. Requires the court to take certain actions after the judgment becomes final, under certain conditions. Sets forth provisions for the interest paid under Subsection (b)(1).

#### SUBCHAPTER K. CRIMINAL PENALTY

Sec. 11.01. CRIMINAL PENALTY. Creates Class A misdemeanor offenses that a person can commit.

#### SUBCHAPTER L. OTHER ENFORCEMENT PROVISIONS

Sec. 12.01. INJUNCTION. Authorizes the board to seek an injunction against violations of this Act or a rule adopted under this Act.

#### SUBCHAPTER M. TRANSITION

Sec. 13.01. TRANSITION. Sets forth provisions allowing licensure without a written examination provided that the application is made before September 1, 2000. Provides that an initial member of the board who is required to be a licensed geoscientist must be qualified for licensure under Subsection (a) of this section. Authorizes the governor to make initial board appointments before November 1, 1999, and sets forth provisions for the terms of these appointments. Requires the board to hold its first meeting before January 1, 2000, and adopt rules under this Act before November 30, 2000. Specifies that a person is not required to obtain a license under this Act until January 1, 2001.

SECTION 1. Effective date: September 1, 1999, except that Section 6.01 and Subchapters J and K, Texas Geoscience Practice Act, take effect January 1, 2001.

SECTION 3. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Amends the relating clause to provide that this Act regulates professional geoscientists, rather than geologists, geophysicists, and soil scientists, and provides penalties, rather than an administrative and a criminal penalty.

SECTIONS 1-45.

Deletes SECTIONS 1-45, and replaces them with SECTIONS 1-3, which reformat and streamline the Texas Geoscience Practice Act.