

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1311  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Board of Professional Geoscientists (TBPG) is subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature. TBPG licenses and regulates professional geoscientists, geoscientists-in-training, and geoscience firms. It also sets standards for the practice of geoscience and investigates and resolves complaints against licensees, taking disciplinary action when necessary.

The Sunset Advisory Commission found that while the agency is fairly well-managed, opportunities exist to standardize processes and improve transparency in the agency's operations. The commission's recommendations would continue the agency for six years; apply and update Sunset's standard across the board recommendations; increase the maximum administrative penalty authority; remove barriers to entry into the profession; and require more transparency in enforcement efforts and reporting.

H.B. 1311 continues TBPG for six years. It also updates standard Sunset good government provisions and updates licensing and enforcement practices to align with best practices.

H.B. 1311 amends current law relating to the continuation and functions of the Texas Board of Professional Geoscientists.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Board of Professional Geoscientists is modified in SECTION 8 (Section 1002.257, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1002.003, Occupations Code, as follows:

Sec. 1002.003. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Professional Geoscientists (TBPG), unless continued in existence as provided by that chapter, is abolished and this chapter (Geoscientists) expires September 1, 2025, rather than September 1, 2019.

SECTION 2. Amends Section 1002.057, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the governor to designate a member of TBPG as the presiding officer of TBPG to serve in that capacity at the pleasure of the governor.

(a-1) Requires TBPG to elect biennially from its own membership an assistant presiding officer and a secretary-treasurer, rather than a presiding officer, assistant presiding officer, and a secretary-treasurer. Prohibits a member from holding a position described by this subsection, rather than from holding one of those positions, for more than two consecutive two-year periods. Provides that a member serves in a position described by this subsection at the will of TBPG and may be removed from that position by a two-thirds majority vote of TBPG. Makes nonsubstantive changes.

SECTION 3. Amends Section 1002.060, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the training program to provide the person with information regarding:

(1) the law governing board operations, rather than the legislation that created TBPG;

(2) TBPG's programs, functions, rules, and budget, rather than the programs operated by TBPG;

(3) the scope of and limitations on the rulemaking authority of TBPG, rather than the role and functions of TBPG;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business TBPG regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business TBPG regulates;

(B) restricts advertising by persons in a profession or business TBPG regulates;

(C) affects the price of goods or services provided by persons in a profession or business TBPG regulates; or

(D) restricts participation in a profession or business TBPG regulates, rather than the rules of TBPG, with an emphasis on the rules that relate to disciplinary and investigative authority;

(5) the results of the most recent formal audit of TBPG;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative hearings, and disclosure of conflicts of interest, rather than the requirements of open meetings law, Chapter 551 (Open Meetings), Government Code, the public information, law, Chapter 552 (Public Information), Government Code, administrative procedure, law, Chapter 2001 (Administrative Procedure), Government Code; and

(B) other laws applicable to members of a state policymaking body in performing their duties, rather than other laws relating to public officials, including conflict of interest laws; and

(7) redesignates existing text of Subdivision (8) as Subdivision (7).

Deletes existing text of Subdivision (5) relating to the current budget for TBPG.

(d) Requires the executive director of TBPG (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of TBPG. Requires each member of TBPG to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 4. Amends Subchapter D, Chapter 1002, Occupations Code, by adding Section 1002.1511, as follows:

Sec. 1002.1511. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TBPG to develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TBPG rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TBPG's jurisdiction.

(b) Requires TBPG's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TBPG to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 5. Amends Section 1002.204, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires TBPG to maintain a system to promptly and efficiently act on complaints filed with TBPG.

(c) Authorizes TBPG to employ or contract with advisors, consultants, geoscientists, engineers, or other persons to provide technical assistance in investigations and disciplinary proceedings. Provides that a person whose services are obtained by TBPG under this subsection, except for an action involving fraud, conspiracy, or malice, is immune from civil liability and is prohibited from being subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken in the course of performing the person's official duties.

SECTION 6. Amends Sections 1002.253(a) and (c), Occupations Code, as follows:

(a) Requires an applicant for a license under this chapter, including an applicant for a temporary or reciprocal license, must apply on a form prescribed by TBPG that is signed by the applicant, rather than signed and sworn to by the applicant before a notary public.

(c) Requires the application to be accompanied by the appropriate application fee. Deletes existing text requiring the application to be accompanied by not fewer than five reference letters, of which not fewer than three are from geoscientists, or other professionals acceptable to TBPG, who have personal knowledge of the applicant's relevant work experience. Makes a nonsubstantive change.

SECTION 7. Amends Section 1002.255, Occupations Code, as follows:

Sec. 1002.255. LICENSE ELIGIBILITY. (a) Deletes existing text requiring an applicant, to be eligible for a license under this chapter, to be of good moral and ethical character as attested to by letters of reference submitted in behalf of the applicant or as otherwise determined by TBPG. Redesignates existing text of Subdivision (2) as Subdivision (1), renumbers the subdivisions accordingly, and makes no further changes.

(b) Authorizes TBPG to accept qualifying work experience in lieu of the education required by Subsection (a)(1), rather than Subsection (a)(2).

SECTION 8. Amends Section 1002.257(a), Occupations Code, to authorize TBPG by rule to authorize the licensing of a person who has not met the examination requirement of Section 1002.255(a)(3) (relating to a requirement that an applicant have at least five years of qualifying work experience meeting certain criteria), rather than Section 1002.255(a)(4) (relating to a requirement that an applicant pass an examination required by TBPG covering certain geoscience topics), if the person is licensed or registered to practice a discipline of geoscience under the law of another state or a foreign country.

SECTION 9. Amends Section 1002.260, Occupations Code, as follows:

Sec. 1002.260. CONFIDENTIALITY OF CERTAIN INFORMATION. Provides that a statement made by a person who provides any information compiled by or submitted to TBPG relating to an applicant is privileged and confidential and may be used only by TBPG or an employee or agent of TBPG who is directly involved in the application or licensure process, rather than providing that a statement made by a person who provides any information compiled by or submitted to TBPG relating to an applicant is privileged and confidential and may be used only by TBPG or an employee or agent of TBPG who is directly involved in the application or licensure process.

SECTION 10. Amends Section 1002.452(b), Occupations Code, to prohibit the amount of the penalty from exceeding \$1,500, rather than \$100, for each violation.

SECTION 11. (a) Provides that, except as provided by Subsection (b) of this section, Section 1002.060, Occupations Code, as amended by this Act, applies to a member of the Texas Board of Professional Geoscientists appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TBPG who, before the effective date of this Act, completed the training program required by Section 1002.060, Occupations Code, as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 1002.060, Occupations Code, as amended by this Act. Prohibits a TBPG member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TBPG held on or after December 1, 2019, until the member completes the additional training.

SECTION 12. Makes application of Sections 1002.053 and 1002.255, Occupations Code, as amended by this Act, prospective.

SECTION 13. Requires the governor, as soon as practicable after the effective date of this Act, to designate a member of TBPG as the presiding officer of TBPG pursuant to Section 1002.057, Occupations Code, as amended by this Act.

SECTION 14. Makes application of Section 1002.452, Occupations Code, as amended by this Act, prospective.

SECTION 15. Effective date: September 1, 2019.