

TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
Texas Geoscience Practice Act



Texas Occupations Code
Chapter 1002

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TEXAS OCCUPATIONS CODE

TITLE 6. REGULATION OF ENGINEERING, ARCHITECTURE, LAND SURVEYING, AND RELATED PRACTICES SUBTITLE A. REGULATION OF ENGINEERING AND RELATED PRACTICES CHAPTER 1002. GEOSCIENTISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1002.001. SHORT TITLE. This chapter may be cited as the Texas Geoscience Practice Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Geoscientists.

(2) "Certified geoscientist" means a geoscientist who has been certified in a discipline of geoscience by a professional organization, society, or association that maintains a certification program.

(3) "Geoscience" means the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth.

(3-a) "Geoscience firm" means a firm, corporation, or other business entity as defined by the board and registered by the board to engage in the public practice of geoscience.

(4) "Geoscientist" means a person qualified to engage in the public practice of geoscience because of the person's knowledge, acquired through education and practical experience, of geoscience, mathematics, and the supporting physical, chemical, mineralogical, morphological, and life sciences.

(4-a) "Geoscientist in training" means a person registered by the board on the basis of education and who meets other requirements established by the board but who is not fully qualified to become a licensed geoscientist under this chapter.

(5) "Licensed geoscientist" or "professional geoscientist" means a person who holds a license issued by the board under this chapter.

(6) "Practice for the public":

(A) means providing professional geoscientific services:

(i) for a governmental entity in this state;

(ii) to comply with a rule established by this state or a political subdivision of this state; or

(iii) for the public or a firm or corporation in this state if the practitioner assumes the ultimate liability for the work product; and

(B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(7) "Public practice of geoscience" means the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks.

(8) "Responsible charge" means the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 1, eff. September 1, 2009.

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 4.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.07, eff. June 17, 2011.

Sec. 1002.004. APPLICATION OF CHAPTER. (a) In this section:

- (1) "Driller" has the meaning assigned by Section 1901.001.
- (2) "Engineer" has the meaning assigned by Section 1001.002.
- (3) "Installer" has the meaning assigned by Section 1902.001.
- (4) "Licensed driller" means a person who holds a license

issued by the state under Chapter 1902.

(5) "Licensed installer" means a person who holds a license issued under Chapter 1902.

(6) "Practice of engineering" has the meaning assigned by Section 1001.003.

(7) "Professional surveying" has the meaning assigned by Section 1071.002.

(b) This chapter does not authorize the practice of professional surveying by a licensed geoscientist. This chapter does not apply to a qualified and registered surveyor who confines the surveyor's practice to acts of surveying allowed under Chapter 1071.

(c) This chapter does not authorize the practice of engineering by a licensed geoscientist.

(d) This chapter does not require an engineer, or a person acting under the supervision of an engineer, who performs service or work that is both engineering and geoscience to be licensed as a geoscientist or to work under the supervision of a licensed geoscientist.

(e) A recommendation, design, analysis, redesign, or review and evaluation, the supervision, or a summary analysis of an engineered structure or work, the performance of which requires engineering education, training, and experience in the application of special knowledge of mathematical, physical, and engineering sciences, is engineering and is subject to Chapter 1001.

(f) This chapter does not permit a licensed geoscientist to perform an engineering analysis supporting an engineering design unless the action is under the supervision of an engineer.

(g) This chapter does not permit a licensed geoscientist to provide construction quality control and evaluation, to perform materials engineering and testing, or to design, develop, or perform engineering review and evaluation of engineering plans and engineering specifications for an engineered structure or work unless the action is under the supervision of an engineer.

(h) With regard to an environmental and pollution remediation project, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the project by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of a component of the project consisting of an engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(i) With regard to a geoscientific investigation of geological conditions affecting an engineered structure, work, or process, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the engineered structure, work, or process by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of the engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(j) The board and the Texas Board of Professional Engineers by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 1001 or a rule adopted under that chapter.

(k) This chapter does not authorize a licensed geoscientist to act as or offer to perform services as a driller or installer. This chapter does not apply to a licensed driller or licensed installer who confines the driller's or installer's activities to activities regulated under Chapter 1901 or 1902, respectively.

(l) The board and the executive director of the Texas Department of Licensing and Regulation by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 51, 1901, or 1902 or a rule adopted under one of those chapters.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Sec. 1002.051. BOARD MEMBERSHIP. (a) The Texas Board of Professional Geoscientists shall administer this chapter.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Six members of the board must be licensed geoscientists.

(d) Three members of the board must be members of the public.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.052. MEMBER ELIGIBILITY. (a) A member of the board must:

(1) be a citizen of the United States;

(2) have been a resident of this state for at least the three years preceding appointment; and

(3) be at least 25 years of age.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in a discipline of geoscience;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "society or trade association" means a nonprofit, cooperative, and

voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used in Section 13, Fair Labor Standards Act of 1938 (29 U.S.C. Section 213), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a society or trade association in a discipline of geoscience; or

(2) the person's spouse is an officer, manager, or paid consultant of a society or trade association in a discipline of geoscience.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.054. TERMS. (a) Members of the board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the board may not serve more than two consecutive full terms.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) is no longer qualified for appointment to the board;

(2) engages in misconduct, is determined to be incompetent, neglects the member's official duties, or engages in malfeasance;

(3) commits a violation of this chapter resulting in disciplinary action or a felony; or

(4) fails without excuse to attend at least half of the regularly scheduled meetings held in a calendar year while the member is a member of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.056. REIMBURSEMENT FOR TRAVEL EXPENSES. A member of the board is entitled to reimbursement for the travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.057. OFFICERS. (a) The board shall elect biennially from its own membership a presiding officer, assistant presiding officer, and secretary-treasurer. A member may not hold one of those positions for more than two consecutive two-year periods. A member serves in the position at the will of the board and may be removed from the position by a two-thirds majority vote of the board.

(b) The board may appoint an assistant secretary and other assistants who are not members of the board to assist the board and exercise its authority in carrying out the board's powers and duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.058. OFFICE. The board shall maintain its office in Austin.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.059. MEETINGS. The board shall hold at least two regular meetings in each calendar year. A special meeting may be held at a time permitted by board rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the board;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigative authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1002.101. EXECUTIVE DIRECTOR. The board shall appoint an executive director, who shall be responsible for managing the day-to-day affairs of the board, including:

- (1) arranging for and supervising the necessary support, secretarial, and clerical services;
- (2) obtaining space for holding examinations, meetings, and conferences;
- (3) printing or purchasing examinations;
- (4) printing and mailing forms, information, and licenses;
- (5) sending notices, collecting fees, and issuing receipts;
- (6) conducting the correspondence of the board, including replying to routine requests for information;
- (7) maintaining the minutes and records of the board;
- (8) keeping records of receipts and disbursements; and
- (9) providing necessary investigative services.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.102. RECEIPTS AND DISBURSEMENTS. The executive director shall receive, administer, and account for all money received under this chapter and shall transfer the money to the comptroller.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a)

The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement of employees within the board. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on documented employee performance. All decisions regarding merit pay for a board employee must be based on that system.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)

The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a

description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Commission on Human Rights for compliance with Subsection (b) (1); and

(3) filed with the governor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1002.151. GENERAL RULEMAKING AUTHORITY. The board shall adopt and enforce rules consistent with this chapter and necessary for the performance of its duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.152. FEES. The board may set reasonable and necessary fees to be charged applicants and license holders under this chapter, including fees for application, examination, licensure, and renewal of a license. The board shall base a fee for examination in a discipline of geoscience on the costs associated with preparing, administering, and grading that examination.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.153. CODE OF PROFESSIONAL CONDUCT. (a) The board by rule shall adopt a code of professional conduct that is binding on all license holders under this chapter.

(b) The board may enforce the code by imposing sanctions as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.154. ENFORCEMENT; REFERRAL OF COMPLAINTS AND

INVESTIGATIONS. (a) The board shall enforce this chapter. Any member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter. The board through its members, officers, counsel, or agents may assist in the trial of a case involving the violation of this chapter, subject to the control of the prosecuting officer.

(a-1) Complaints and investigations under this chapter are of two types:

(1) complaints received from a member of the public; and

(2) complaints and investigations that are initiated by the board as a result of information that becomes known to the board or board staff and that may indicate a violation.

(a-2) The board by rule shall prioritize complaints and investigations. Rules adopted under this subsection must provide that:

(1) a complaint that alleges an action that may harm the public takes precedence over a complaint that does not allege an action that may harm the public or may harm the public to a lesser degree; and

(2) with regard to complaints that do not allege an action that may harm the public, a complaint filed by a member of the public takes precedence over a complaint initiated by the board.

(b) Notwithstanding Subsection (a), the board shall refer a complaint or investigation involving the unlicensed practice of geoscience by a person who is licensed as an engineer, surveyor, driller, installer, or member of another similar profession to the agency that issued the license to the person.

(c) The board may administer oaths and affirmations and issue subpoenas to compel the attendance of witnesses and the production of evidence.

(d) The attorney general shall act as legal advisor to the board and shall provide legal assistance as necessary in enforcing this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 2, eff. September 1, 2009.

Sec. 1002.155. RECOGNITION OF USE OF DESIGNATIONS. (a) The board by rule may recognize the use of the designations used by a professional organization, society, or association that maintains a certification program in a discipline of geoscience if:

(1) the requirements for that certification are acceptable to the board;

(2) the full name or recognized abbreviation of the organization, society, or association granting the certification is stated following or in conjunction with the use of the designation or abbreviation; and

(3) the designation or abbreviation is not used in a manner that is misleading or that creates an impression that the person is licensed to practice geoscience for the public unless the person is licensed under this chapter.

(b) The board by rule shall recognize the title "geological engineer," "geotechnical engineer," "hydraulic engineer," or "agricultural engineer" or another legitimate engineering title as a legitimate engineering title separate from geoscience, the use of which requires licensure as an engineer.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.156. ESTABLISHMENT OF DISCIPLINES. The board by rule shall establish the disciplines of geoscience in which a person may be licensed and the requirements for eligibility for a license in each discipline.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.157. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. The board may enter into agreements with licensing or registration boards in other states and other appropriate organizations, societies, associations, and agencies to develop uniform standards for:

(1) the licensing or registration of geoscientists;

(2) accrediting educational programs;

(3) establishing reciprocal and temporary licenses;

- (4) developing regional or national examinations;
- (5) evaluating applicants; or
- (6) other purposes consistent with this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.158. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. In administering this chapter, the board may:

- (1) appoint committees;
- (2) employ personnel, contractors, and consultants;
- (3) lease or purchase furnishings, equipment, and supplies;
- (4) lease office space; and
- (5) incur other similar expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.159. ROSTER OF LICENSE HOLDERS. (a) The board shall maintain a roster stating the name, discipline of geoscience, and place of business of each licensed geoscientist.

(b) The board shall maintain copies of the roster and shall provide a copy on request to a state agency, a county or municipal clerk or building official, or a license holder. The board may charge a license holder a reasonable fee set by the board for providing the copy.

(c) The board shall provide a copy of the roster to another person on written request, subject to payment of a reasonable fee set by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.160. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENTS EXIST. The board shall maintain a list of each state or foreign country in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1002.201. PUBLIC INTEREST INFORMATION. (a) The board shall:

- (1) prepare information of public interest describing:
 - (A) the regulatory functions of the board; and
 - (B) the board's procedures by which complaints are filed with and resolved by the board; and
- (2) make the information available to the public and appropriate state agencies.

(b) The board shall maintain on the board's Internet website:

- (1) information regarding the procedure for filing a complaint with the board; and
- (2) a means by which a person may electronically file a complaint with the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 1, eff. September 1, 2013.

Sec. 1002.202. COMPLAINTS. (a) A person may file a complaint alleging a violation of this chapter or a rule adopted under this chapter.

(b) A complaint from a member of the public must be:

- (1) in writing;
- (2) sworn to by the person making the complaint; and
- (3) filed with the secretary-treasurer or electronically through the board's Internet website.

(c) A complaint that is initiated by the board or board staff must be:

- (1) in writing; and
- (2) signed by the person who became aware of information that may indicate a violation.

(d) A complaint must contain sufficient information for the board to determine whether the board has the jurisdiction and authority to resolve the complaint. If the board does not have the jurisdiction and authority, the board shall dismiss the complaint. A complaint must have sufficient information for the board to commence an investigation, though the amount of

information ultimately required for the board to determine the validity of the complaint may be more than the information initially included with the complaint.

(d-1) The board shall accept a complaint regardless of whether the complaint is notarized.

(e) The board shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed.

(f) For any complaint determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the executive director and investigator, with board approval, determine that the complaint:

- (1) was made for the likely purpose of harassment; and
- (2) does not demonstrate apparent harm to any person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 2, eff. September 1, 2013.

Sec. 1002.203. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint was received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall investigate all complaints brought to its attention and may employ investigators, expert witnesses, and hearing officers, appoint advisory committees, and conduct hearings to determine whether disciplinary or other action should be taken.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.205. PUBLIC PARTICIPATION. The board shall 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 jurisdiction of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.206. COMPLAINT EDUCATION. (a) In this section, "state agency" has the meaning assigned by Section 57.001.

(b) The board shall work with each state agency that uses the services of a person licensed under this chapter and other appropriate state agencies as determined by the board, including a state agency with which the board has entered into a memorandum of understanding that addresses the coordination of activities or complaints, to educate the agency's employees regarding the procedures by which complaints are filed with and resolved by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

Sec. 1002.207. DUTY OF STATE AGENCY TO REPORT POTENTIAL VIOLATION. (a) In this section, "state agency" has the meaning assigned by Section 57.001.

(b) A state agency that becomes aware of a potential violation of this chapter or a rule adopted under this chapter shall forward any information relating to the potential violation and any subsequently obtained information to the board.

(c) Information forwarded by a state agency under this section that is privileged or confidential remains privileged or confidential following receipt by the board. The privilege or confidentiality extends to any board communication concerning the information forwarded, regardless of the form, manner, or content of the communication.

(d) The forwarding of privileged or confidential information by a state agency does not waive a privilege in or create an exception to the confidentiality of the information.

(e) A state agency's provision of information or failure to provide information under this section does not give rise to a cause of action against the agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 1002.251. LICENSE REQUIRED. (a) Unless exempted by this chapter, a person may not engage in the public practice of geoscience unless the person holds a license issued under this chapter.

(b) Unless the person is licensed under this chapter, a person may not:

(1) use the term "Licensed Professional Geoscientist" or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) otherwise represent to the public that the person is qualified to:

(A) practice as a geoscientist; or

(B) engage in the public practice of geoscience.

(c) A person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.252. EXEMPTIONS. The following activities do not require a license under this chapter:

(1) geoscientific work performed by an employee or a subordinate of a license holder under this chapter if the work does not include the responsible charge of geoscientific work and is performed under the direct supervision of a licensed geoscientist who is responsible for the work;

(2) geoscientific work performed by an officer or employee of the United States practicing solely as such an officer or employee;

(3) geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of private industry;

(4) geoscientific research conducted through an academic institution, local, state, or federal governmental agency, nonprofit research institution, or for-profit organization, including submission of a report on the research to a public agency, unless the work is covered by Section 1002.251(c);

(5) teaching geoscience or a related physical or natural science;

(6) work customarily performed by a cartographer, technician, or physical or natural scientist, including a geologist, geophysicist, soil scientist, chemist, archaeologist, geographer, or oceanographer, if the work does not include the public practice of geoscience;

(7) work performed by an archaeologist, geoscientist, or other person conducting a stratigraphic or historical geological investigation for archaeological purposes;

(8) testifying or preparing and presenting an exhibit or document for the sole purpose of being placed in evidence before an

administrative or judicial tribunal or hearing if the testimony, exhibit, or document does not imply that the person is licensed under this chapter;

(9) the evaluation by a state agency, as defined by Section 2001.003, Government Code, or by a hearing examiner of an exhibit or document offered or placed in evidence before an administrative tribunal; or

(10) the determination of the suitability of a site for a specific on-site sewage disposal system by a person who has successfully completed site evaluation training approved by the Texas Commission on Environmental Quality and is:

(A) registered by the commission as:

(i) an installer, if the commission recognizes only one level of installer; or

(ii) the highest level of installer recognized by the commission, if the commission recognizes more than one level of installer;

(B) a designated representative; or

(C) a registered professional sanitarian.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.253. LICENSE APPLICATION. (a) An applicant for a license under this chapter, including an applicant for a temporary or reciprocal license, must apply on a form prescribed by the board that is signed and sworn to by the applicant before a notary public.

(b) The application must include:

(1) information concerning the applicant's education;

(2) a detailed summary of the applicant's relevant work experience; and

(3) a signed statement that the applicant has read and will comply with the code of professional conduct adopted under this chapter.

(c) The application must be accompanied by:

(1) not fewer than five reference letters, of which not fewer than three are from geoscientists, or other professionals acceptable to the board, who have personal knowledge of the applicant's relevant work experience; and

(2) the appropriate application fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.254. EXAMINATIONS. (a) The board may prepare, administer, and grade oral and written examinations required or permitted under this chapter.

(b) The board may adopt or recognize, in whole or in part, an examination prepared, administered, or graded by another organization, on a regional or national basis, that the board determines appropriate to measure the qualifications of an applicant for a license under this chapter if:

- (1) the examination questions, the correct answers, and the applicant's completed examination are available to the board; and
- (2) the board retains the authority to determine a passing grade for a license in this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.255. LICENSE ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

(1) 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 the board;

(2) have:

(A) graduated from a course of study in a discipline of geoscience satisfactory to the board that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline; or

(B) satisfactorily completed other equivalent educational requirements as determined by the board;

(3) have a documented record of at least five years of qualifying work experience, as provided by Section 1002.256, that demonstrates that the applicant is qualified to assume responsible charge of geoscientific work;

(4) pass an examination required by the board covering the fundamentals and practice of the appropriate discipline of geoscience; and

(5) meet any other requirements established by the board.

(b) The board may accept qualifying work experience in lieu of the education required by Subsection (a)(2).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.256. QUALIFYING WORK EXPERIENCE. (a) The board shall apply the following standards in evaluating the work experience of an applicant for a license under Section 1002.255:

(1) each year of work experience acceptable to the board constitutes one year of qualifying work experience if the experience was acquired under the direct supervision of:

(A) a geoscientist who is licensed in this state or in another state under requirements for licensure or registration that are comparable to those in this chapter;

(B) a geoscientist who meets the educational and work experience requirements for licensure but is not required to be licensed under this chapter; or

(C) another professional acceptable to the board;

(2) each year of work experience acceptable to the board and acquired before September 1, 2003, constitutes one year of qualifying work experience if the experience:

(A) was acquired under the direct supervision of:

(i) a geoscientist who meets the educational and work experience requirements for a license under this chapter;

(ii) a geoscientist who is licensed or registered under comparable requirements in another state; or

(iii) another professional acceptable to the board;

or

(B) would constitute the responsible charge of professional geoscientific work as determined by the board; and

(3) each year of full-time graduate study in a discipline of geoscience that is acceptable to the board constitutes one year of qualifying work experience.

(b) The board may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work

experience if the research or teaching, in the judgment of the board, is comparable to work experience obtained in the practice of geoscience.

(c) For purposes of Subsection (a)(3), the board may not accept more than two years of full-time graduate study in a discipline of geoscience as qualifying work experience.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.257. RECIPROCAL LICENSE. (a) The board by rule may authorize the licensing of a person who has not met the examination requirement of Section 1002.255(a)(4) if the person is licensed or registered to practice a discipline of geoscience under the law of another state or a foreign country.

(b) The board may 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 chapter and who pays the required fees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.258. TEMPORARY LICENSE. (a) The board may issue a temporary license to a person who:

(1) is not a resident of this state and does not have an established place of business in this state but who seeks to engage in the public practice of geoscience in this state for a temporary period; or

(2) applies for a reciprocal license and seeks to engage in the public practice of geoscience pending a determination on the application for the reciprocal license.

(b) An applicant for a temporary license must:

(1) apply to the board for a temporary license, provide proof of licensure or registration in another state or a foreign country and pay the required fees;

(2) agree to comply with the signature requirements of Section 1002.263(b) and to affix the person's seal from the jurisdiction in which the person is licensed or registered on all work completed while practicing under the temporary license; and

(3) file the required information and reports and comply with other requirements established by the board concerning the person's temporary practice.

(c) A temporary license issued under Subsection (a)(1) expires on the 90th day after the date of issuance. A temporary license issued under Subsection (a)(2) expires on the date the reciprocal license is issued or denied.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.259. WAIVER OF REQUIREMENTS. (a) Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license.

(b) Each requirement waived under this section and the basis for the waiver must be recorded in the applicant's record and in the proceedings of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.260. CONFIDENTIALITY OF CERTAIN INFORMATION. A statement made by a person who provides a reference for an applicant for a license under this chapter or provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential and may be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.261. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who meets the requirements of this chapter on payment of the applicable license fee.

(b) The license must:

- (1) show the full name of the license holder;
- (2) have a serial number;
- (3) state the license holder's discipline of geoscience; and
- (4) be signed by an appropriate officer of the board under the board's seal.

(c) The issuance by the board of a license is prima facie evidence that during the term of the license the license holder is entitled to all the rights and privileges of a licensed geoscientist.

(d) A licensed geoscientist may engage in the practice of any discipline of geoscience regardless of the discipline of geoscience stated on the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.262. LICENSE DURATION; EXPIRATION. (a) A license is valid for a period not to exceed three years and expires according to a schedule established by board rule.

(b) On expiration, a license is invalid and may not be renewed except as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.263. SEAL. (a) On issuance of a license, the license holder must obtain a seal of a design established by the board bearing:

- (1) the license holder's name;
- (2) the license number;
- (3) the words "Licensed Professional Geoscientist"; and
- (4) the license holder's discipline of geoscience.

(b) A geoscientific report, document, or other record, as defined by the board, that is offered to the public and prepared or issued by or under the supervision of a licensed geoscientist must, in accordance with rules adopted by the board, include the full name, signature, and license number of the license holder who prepared the report, document, or other record or under whose supervision it was prepared and bear an impression of the license holder's seal.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.264. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. The board shall issue a new license to replace a license that has been lost, destroyed, or mutilated, subject to the rules and fees adopted by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 1002.301. LICENSE RENEWAL. (a) Not later than the 60th day before the date the license expires, the board shall notify a license holder of:

- (1) the date the license expires; and
- (2) the amount of the fee required for renewal.

(b) The board shall renew the license of a license holder who before the date the license expires or within a period not to exceed 60 days after the expiration date:

- (1) submits the required renewal application and fee and a penalty for late renewal, if required; and
- (2) meets the requirements for renewal established by the board.

(c) The board by rule may establish conditions and fees for the reissuance of a license that has lapsed, expired, or been suspended or revoked.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.302. CONTINUING PROFESSIONAL EDUCATION. As a condition for renewal of a license, the board may require each license holder to participate in continuing professional education on a periodic or other basis.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER H. PUBLIC PRACTICE OF GEOSCIENCE

Sec. 1002.351. PUBLIC PRACTICE OF GEOSCIENCE BY FIRM OR CORPORATION. (a)

A firm or corporation may engage in the public practice of geoscience only if:

(1) the geoscientific work is performed by, or under the supervision of, a licensed geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) the principal business of the firm or corporation is the public practice of geoscience as determined by board rule and a principal of the firm or an officer or director of the corporation is a licensed geoscientist and has overall supervision and control of the geoscientific work performed in this state.

(b) The board may adopt rules relating to the public practice of geoscience by a firm or corporation. Rules adopted under this section must recognize that this chapter does not apply to an engineer or engineering firm that performs service or work that is both engineering and geoscience. A firm that engages in the practice of both engineering and geoscience is exempt from any firm registration requirements created under this subsection.

(c) Except as provided by this section, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscientific services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Section [1002.263\(b\)](#).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.352. GEOSCIENTIST IN TRAINING. The board by rule shall establish criteria by which an individual who expresses the intent to become a licensed geoscientist under this chapter may register with the board as a geoscientist in training.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

Sec. 1002.353. ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion regarding:

(1) an interpretation of this chapter; or

(2) the application of this chapter to a person with respect to a specified existing or hypothetical factual situation.

(b) The board shall respond to a request for an opinion not later than the 180th day after the date the request is submitted to the board unless the board affirmatively states the board's reason for not responding to the request within that period or not responding to the request at all.

(c) The board shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single document that is available on the Internet.

(d) The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

(e) It is a defense to prosecution or to imposition of an administrative penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1002.401. DENIAL OF LICENSE. (a) The board may deny a license:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that there is probable cause to believe that an applicant has violated:

- (A) this chapter;
- (B) a provision of this chapter to which a license holder would be subject; or
- (C) a comparable provision in the licensing or registration law of another state.

(b) The board may not issue a license pending the disposition of a complaint alleging a violation in this or another state if the board has notice of the alleged violation.

(c) The board shall notify an applicant who is denied a license of the reason for denial in writing not later than the 30th day after the date of the board's decision. Not later than the 30th day after the date of receipt of the notice, the applicant may make a written request for a hearing. In the absence of a request for a hearing, the board's action is final.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.402. GROUNDS FOR DISCIPLINARY ACTION. The board may impose appropriate sanctions for:

- (1) the practice of fraud or deceit in obtaining a license as a geoscientist;
- (2) incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;
- (3) conviction of a license holder of a crime involving moral turpitude or a felony;
- (4) the imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;
- (5) the issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;
- (6) using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;
- (7) aiding or abetting a person in a violation of this chapter;
- (8) the revocation or suspension of a license, the denial of renewal of a license, or other disciplinary action taken by a state agency,

board of registration, or similar licensing agency for geoscientists or a profession or occupation related to the public practice of geoscience;

(9) practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or qualified to practice geoscience if the person is not licensed under this chapter or the person's firm or corporation does not employ a licensed geoscientist as required under this chapter; or

(10) violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.403. DISCIPLINARY ACTIONS. (a) The board may take the following disciplinary actions:

(1) refuse to issue or renew a license;

(2) permanently revoke a license;

(3) suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;

(4) issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(6) require that a license holder participate in a peer review program under rules adopted by the board;

(7) require that a license holder obtain remedial education and training prescribed by the board;

(8) impose probation on a license holder requiring regular reporting to the board;

(9) require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under this chapter;

(10) impose an appropriate administrative penalty as provided by Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under this chapter; or

(11) issue a cease and desist order.

(b) The board may not impose a sanction for a ground described by Section 1002.402(8) that exceeds in severity or duration the sanction on which the board's action is based.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.404. RIGHT TO HEARING. A person is entitled to a hearing before the board may suspend or revoke the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.405. REINSTATEMENT. (a) On application, the board may reinstate a license to engage in the public practice of geoscience to a person whose license has been revoked if a majority of the entire board votes in favor of the reinstatement.

(b) As a condition for reinstatement, the board may:

- (1) review the applicant's qualifications and experience;
- (2) require continuing professional education;
- (3) conduct a reexamination on a periodic or other basis; or
- (4) require other evidence of the competence of the applicant.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 1002.451. IMPOSITION OF PENALTY. The board may impose an administrative penalty against a person licensed under this chapter or any other person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.452. AMOUNT OF PENALTY. (a) The board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The amount of the penalty may not exceed \$100 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation;

and

(6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.453. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules of procedure for the imposition of an administrative penalty.

(b) Rules adopted under this section must conform to the requirements of Chapter 2001, Government Code.

(c) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.454. OPTIONS FOLLOWING FINAL ORDER: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a) (3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b) (2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.455. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.456. JUDICIAL REVIEW. The order of the board is subject to judicial review.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.457. REMITTANCE OF PENALTY AND INTEREST. (a) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

(b) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(c) Interest accrues under Subsection (b) (1) at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER K. OTHER ENFORCEMENT PROVISIONS

Sec. 1002.501. INJUNCTION. The board may seek an injunction against a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.