



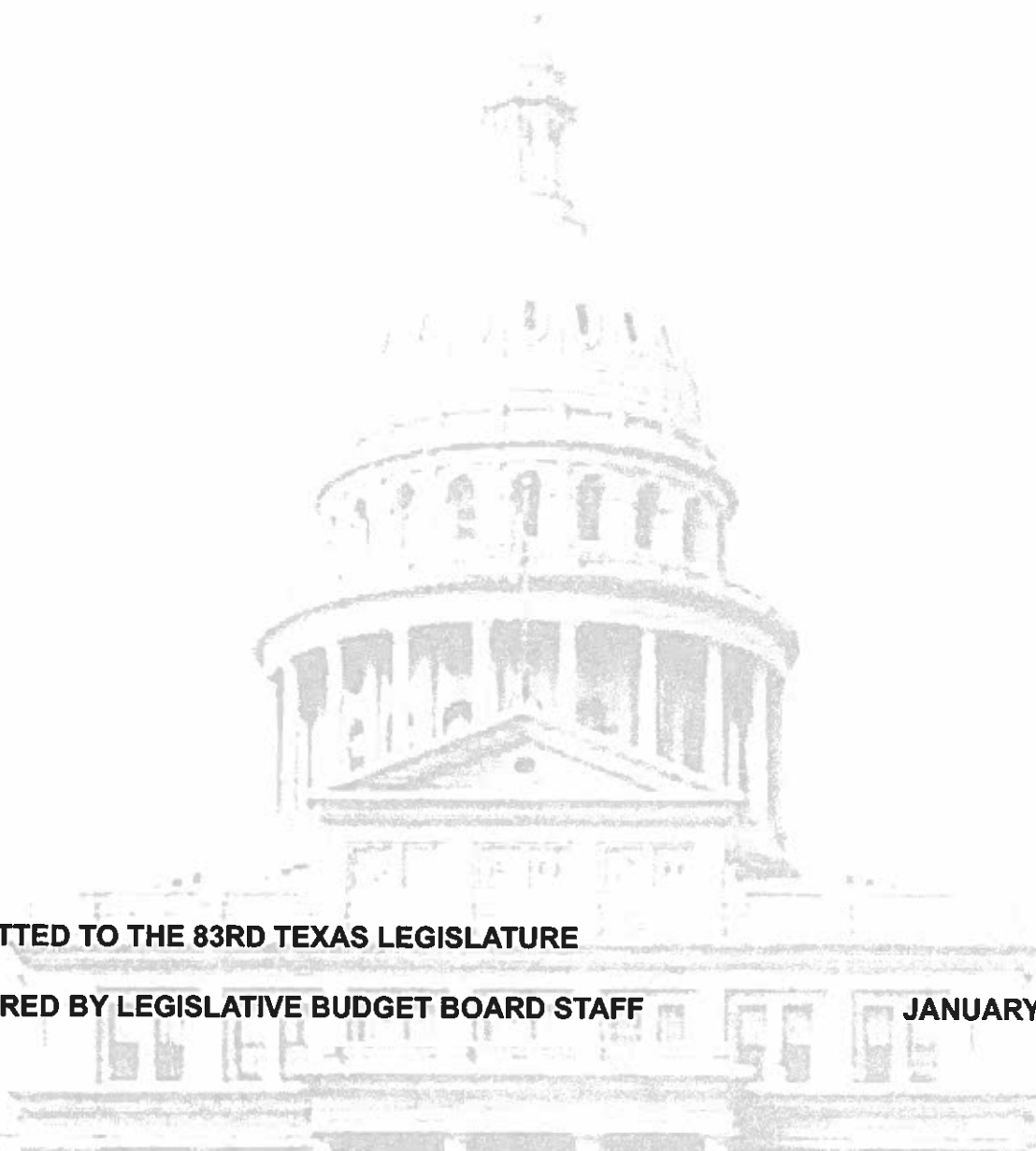
LEGISLATIVE BUDGET BOARD

Executive Summary of Legislative Budget Board Reports

SUBMITTED TO THE 83RD TEXAS LEGISLATURE

PREPARED BY LEGISLATIVE BUDGET BOARD STAFF

JANUARY 2013



STRENGTHEN THE BOARD OF PROFESSIONAL GEOSCIENTISTS' ABILITY TO INVESTIGATE VIOLATIONS

LBB RECOMMENDATIONS

1 Amend statute to require TBPG to maintain information on its website about filing a complaint and provide an option for electronic submission of a formal complaint.

2 Amend statute to clarify TBPG should accept a complaint whether or not it is notarized.

3 Amend statute to require an agency aware of a potential violation by a geoscientist to forward the information to TBPG.

4 Amend statute to require TBPG to work with state agencies to train employees on the complaint process.

The introduced 2014–15 General Appropriations Bill does not include any adjustments as a result of these recommendations. These recommendations require statutory changes.

These recommendations would simplify the process for filing a complaint with TBPG, clarify statutory requirements for filing a complaint, and increase awareness of when and how to file a complaint. As a result, TBPG's ability to enforce the Texas Geoscience Practice Act and investigate complaints would be strengthened.

The Board of Professional Geoscientists (TBPG) was established in 2001 and is charged with enforcing the Texas Geoscience Practice Act. TBPG licenses professional geoscientists performing work for the public and investigates complaints against professional geoscientists. Work completed by licensed geoscientists directly impacts the public when involves the building of roadways, groundwater planning, or the cleanup of abandoned spill sites. A geoscientist's error could, for example, result in the collapse of a bridge if the soil and rock it is built on is deemed unstable.

The procedure for filing a complaint against a professional geoscientist is more difficult than procedures required for other regulatory agencies. The process for submitting a complaint is not clearly described on TBPG's website and the complaint form requires unnecessary steps, such as the signature and seal of a notary public.

Geoscientific activities sometimes overlap with activities conducted by state agencies other than TBPG. As a result, certain state agencies are in a position to observe possible violations of the Texas Geoscience Practice Act. At least one such agency has developed an internal process to resolve potential complaints against a licensed geoscientist without involving TBPG. When this occurs, TBPG's ability to effectively enforce the Texas Geoscience Practice Act is diminished.

The full text of this report can be found in the *Texas State Government Effectiveness and Efficiency Report* (Legislative Budget Board, January 2013), page 390.



LEGISLATIVE BUDGET BOARD

**Texas State Government
Effectiveness and Efficiency Report
Selected Issues and Recommendations**

SUBMITTED TO THE 83RD TEXAS LEGISLATURE

PREPARED BY LEGISLATIVE BUDGET BOARD STAFF

JANUARY 2013

STRENGTHEN THE BOARD OF PROFESSIONAL GEOSCIENTISTS' ABILITY TO INVESTIGATE VIOLATIONS

The Texas Board of Professional Geoscientists was established in 2001 and is charged with enforcing the Texas Geoscience Practice Act. Pursuant to this act, the agency licenses professional geoscientists performing work for the public and investigates complaints against professional geoscientists. Services performed by licensed geoscientists directly affect the public in activities such as roadway construction, groundwater planning, and abandoned site cleanup. A geoscientist's error could, for example, result in the collapse of a bridge if the soil and rock it is built on is unstable. Many of the agency's regulatory responsibilities relating to professional geoscientists overlap with geoscientific activities carried out by other state agencies.

Simplifying the complaint filing process, clarifying statutory requirements for filing a complaint, requiring state agencies to notify the Texas Board of Professional Geoscientists of potential violations of the Texas Geoscience Practice Act, and requiring the agency to train appropriate state employees on when and how to file a complaint would strengthen the agency's ability to enforce statutory requirements for professional geoscientists and investigate complaints.

CONCERNS

- ◆ The process for filing a complaint against a professional geoscientist is more difficult than comparable processes at other regulatory agencies. The Board of Professional Geoscientists' complaint form requires the signature and seal of a notary public and the complaint submission process is not described on their website as clearly as it typically is on other state regulatory agency websites.
- ◆ At least one agency overseeing activities requiring a licensed geoscientist has developed an internal complaint evaluation process to determine whether a complaint should be forwarded to the Texas Board of Professional Geoscientists. Enforcement of the Texas Geoscience Practice Act is diminished when a state agency resolves a potential complaint against a licensed geoscientist without involving the Texas Board of Professional Geoscientists.

RECOMMENDATIONS

- ◆ **Recommendation 1:** Amend statute to require the Texas Board of Professional Geoscientists to maintain information about filing a complaint against a professional geoscientist on its website. The agency should also provide an option for a complaint to be submitted electronically.
- ◆ **Recommendation 2:** Amend statute to clarify that the Texas Board of Professional Geoscientists should accept a complaint whether or not it is notarized.
- ◆ **Recommendation 3:** Amend statute to require an agency aware of a potential violation of the Texas Geoscience Practice Act to forward the information to the Texas Board of Professional Geoscientists. Agencies with overlapping responsibility for overseeing the work of geoscientists should work together to avoid duplicating investigative efforts.
- ◆ **Recommendation 4:** Amend statute to require the Texas Board of Professional Geoscientists to work with appropriate state agencies to train state employees involved in projects requiring the services of a licensed geoscientist on the complaint process.

DISCUSSION

The Texas Board of Professional Geoscientists (TBPG) was established in 2001 after the Seventy-seventh Legislature, Regular Session, passed the Texas Geoscience Practice Act. TBPG licenses geologists, geophysicists, and soil scientists as well as geoscience firms; ensures compliance with the Texas Geoscience Practice Act; and conducts outreach activities. Licensing of a geoscientist establishes legal accountability for geoscientist's work, indicates a geoscientist achieved a required level of experience and education, and allows civil penalties to be enforced against persons that violated standards set for licensed geoscientists.

Any individual or firm practicing or offering to perform geoscience work for the public must be licensed. Certain activities overseen by agencies such as the Texas Commission on Environmental Quality (TCEQ), the Railroad Commission of Texas (Railroad Commission), the Texas Department of Transportation (TxDOT), and the Texas Water Development Board (TWDB) require a professional

geoscientist by either statute or rule. Examples of these activities include:

- preconstruction site evaluations done to determine a site's suitability for sewage facilities;
- certain mapping, planning, reporting, sampling, and analysis associated with waste permits provided by TCEQ;
- assessment reports and response action plans for efforts associated with the remediation of waste or cleanup of abandoned sites;
- determinations of usable-quality water zones that need to be sealed off to prevent contamination during certain drilling activities;
- authorization for injection or disposal wells for underground storage or disposal of fluids; and
- the modeling of groundwater availability and sampling of groundwater for legislatively mandated reports.

Statute exempts certain professionals engaged in geoscientific-related work from geoscientist licensing requirements. Some exclusions include:

- licensed engineers performing work that is both engineering and geoscientific in nature;
- water well drillers and water pump installers;
- work performed exclusively in the exploration and development of energy resources, base metals, or minerals if done in and for the benefit of private industry;
- teaching; and
- certain persons evaluating specific on-site locations for sewage disposal systems.

Since TBPG's inception, the annual number of licensed geoscientists has been approximately 5,000. As **Figure 1** shows, fiscal year 2008 had the highest number of licensed geoscientists with more than 6,000. TBPG attributes the decrease in the number of licensees after fiscal year 2008 to natural attrition, increases in licensing fees, new requirements for continuing education, and statutory exemptions from licensure.

**FIGURE 1
LICENSES ISSUED BY THE BOARD OF PROFESSIONAL
GEOSCIENTISTS, FISCAL YEARS 2007 TO 2012**

FISCAL YEAR	LICENSES ISSUED
2007	5,026
2008	6,361
2009	5,061
2010	5,079
2011	5,535
2012*	4,823

*Estimated.
SOURCE: Legislative Budget Board.

COMPLAINTS AGAINST LICENSED GEOSCIENTISTS

TBPG is required to enforce the Texas Geoscience Practice Act and to determine whether disciplinary or other action should be taken by investigating all complaints it receives. Anyone can initiate a complaint. TBPG staff may also initiate a complaint upon receiving information indicating a possible violation. Complaints can be brought to TBPG for any action believed to violate the Texas Geoscience Practice Act or conduct considered detrimental to public health, safety, and welfare. The offering of public geoscience services and qualifications with an expired license or no license is the most common complaint for which disciplinary action occurs.

As shown in **Figure 2**, TBPG has received an annual average of 16.8 complaints within its jurisdiction since its establishment. The resolution of some complaints occurs in the fiscal year after the complaint was filed due to the time necessary to process the complaint. TBPG has resolved a total of 102 complaints as **Figure 2** shows. Of these complaints, the agency resolved 93 in the past three fiscal years. This is a result of changes made to the agency's

**FIGURE 2
BOARD OF PROFESSIONAL GEOSCIENTISTS COMPLAINT
RESOLUTIONS, FISCAL YEARS 2007 TO 2012**

FISCAL YEAR	JURISDICTIONAL COMPLAINTS RECEIVED	COMPLAINTS RESOLVED
2007	4	4
2008	0	1
2009	5	4
2010	6	25
2011	62	47
2012*	24	21

*Estimated.
SOURCE: Legislative Budget Board.

procedures regarding complaints and their resolution. Since fiscal year 2007, complaint resolution has most commonly resulted in non-disciplinary warnings, or advertisements, and non-public reprimands by TBPG. TBPG may initiate the following disciplinary actions according to its rules:

- suspend, permanently revoke, or refuse to issue or renew a license, registration, or certification;
- issue a public or private reprimand;
- impose limitations, conditions, or restrictions on an individual or firms practice;
- require a violator to participate in a peer review program;
- require a license or certificate holder to obtain remedial education and training;
- impose probation;
- require restitution of compensation or fees;
- impose an administrative penalty; or
- issue a cease and desist order.

In fiscal year 2011, all but one complaint filed originated from TBPG. No state agencies have ever filed complaints, although two complaints were filed individually by state employees. **Figure 3** shows the originating source of complaints filed with TBPG since fiscal year 2007.

TBPG maintains a form for filing a formal complaint against a licensed geoscientist or reporting possible violations of the Texas Geoscience Practice Act. This form is available on TBPG's website; however, it does not include detailed online

**FIGURE 3
SOURCE OF COMPLAINTS FILED WITH THE BOARD OF
PROFESSIONAL GEOSCIENTISTS,
FISCAL YEARS 2007 TO 2011**

FISCAL YEAR	COMPLAINTS RECEIVED	INTERNAL	PUBLIC
2007	4	0	4*
2008	0	0	0
2009	5	3	2*
2010	25	6	19
2011	62	61	1

*One complaint during each of these fiscal years was submitted by a state employee acting alone and not as a representative of a state agency. TBPG classifies these complaints as being filed from the public since they were not officially filed on behalf of a state agency.

Source: Texas Board of Professional Geoscientists.

instructions. Including instructions on how to file a complaint would help a person unfamiliar with TBPG's operations to understand the process. Other licensing entities including the Texas Board of Professional Engineers, Texas Board of Professional Land Surveying, Texas State Board of Pharmacy, and Texas Board of Nursing include "how to file a complaint" guides on their websites.

A complaint form must be mailed to TBPG's post office box, although exhibits for consideration of a complaint may be e-mailed or faxed to TBPG. The Texas State Board of Pharmacy allows persons with a complaint to submit their complaint form either electronically or in writing.

Recommendation 1 would amend the Texas Occupations Code to require information on how to file a complaint be made available on TBPG's website. This requirement is consistent with Texas Occupations Code, Section 1001.251(c), which requires the Board of Professional Engineers to maintain on its website information for filing a complaint and the form used to file a complaint. Recommendation 1 would also require TBPG to make it easier to submit a complaint by offering an option to electronically submit the complaint form. This option could be via e-mail, an online form, or other means.

Unlike complaint forms used by other regulatory entities, TBPG's form requires a notarized signature and seal. TBPG reported this requirement was included in an effort to comply with Texas Occupations Code, Section 1002.202(b)(2), which requires a complaint from a member of the public to be "sworn to by the person making the complaint." TBPG considered removing the notary requirement but is concerned this would create legal grounds for dismissal of a complaint.

Requiring a notary to sign and seal a complaint is inconsistent with requirements of other regulatory entities. This unnecessary step could deter some persons from filing a complaint. TBPG could modify the complaint form to include a statement of certification by the person submitting the form attesting that the information provided is true and accurate. Recommendation 2 would amend the Texas Occupations Code to require TBPG to accept a complaint form whether or not it is notarized. This statutory change would clarify that notarization of a complaint is not required to meet requirements for the complaint process. This amendment is similar to the complaint process statutorily outlined for the Texas Board of Professional Land Surveyors in Texas Occupations Code, Section 1071.203(c).

SHARING OF POTENTIAL VIOLATIONS BETWEEN AGENCIES

Statute prohibits an unlicensed person from preparing a geoscientific report required by state or federal law, state agency rule, or federal regulation. State agencies required to use the services of a professional geoscientist in preparation of a report or other activity are, therefore, in a position to identify evidence of misconduct by a geoscientist or geoscience firm. These agencies should share information regarding a potential violation with TBPG. TBPG is charged with the responsibility of determining whether a questionable act violated the rules and statutes it oversees. Additionally, TBPG is responsible for approving annual licenses for professional geoscientists and it should have access to information regarding potential violations of statute or rule when considering license renewal.

TBPG has entered into Memorandums of Agreement (MoA) with the Railroad Commission of Texas, Texas Board of Professional Land Surveying, and TWDB, explicitly stating these agencies will advise TBPG of any information they identify that may indicate a violation of the statutory requirements for professional geoscientists. However, agreements TBPG has signed with TCEQ and the Texas Board of Professional Engineers do not include this clause. In addition, as of the end of fiscal year 2012, TBPG did not have an MoA with TxDOT, but the agencies were working to establish an agreement. The state's ability to consistently address potential statutory violations by a geoscientist is weakened without an agreement clarifying that TBPG will be informed of possible violations by other state agencies routinely observing geoscientific work.

TxDOT reports that if an employee became aware of a potential violation of the Texas Geoscience Practice Act, the employee would likely inform their supervisor of the violation. The employee would then be advised to file an individual complaint as prescribed by the Texas Geoscience Practice Act and TBPG would handle the matter.

TCEQ developed an internal procedure to guide its staff on the referral of inappropriate geosciences work to TBPG. The agency indicated its employees were not aware of how to proceed with a complaint to TBPG. According to TCEQ procedures

"...TCEQ staff have an obligation to adhere to the policies and procedures of [TCEQ] to resolve deficiencies in work submitted to the agency. When issues with geoscientific work have not been adequately resolved using the Agency's normal course of action, it

may be appropriate to make a complaint referral to the TBPG."

TCEQ developed a Professional Geoscientist Workgroup that reviews complaints raised by its staff. If the workgroup agrees a complaint is warranted it will transmit the complaint to TBPG; however, if it does not agree, the complaint originator is notified TCEQ will not forward the referral. Agencies that make an internal determination regarding potential violations by a professional geoscientist circumvent TBPG's authority to enforce the Texas Geoscience Practice Act.

To help ensure TBPG has access to information regarding licensed geoscientists practicing in the public sphere and the ability to enforce the Texas Geoscience Practice Act, Recommendation 3 would amend the Texas Occupations Code to require a state agency aware of information that may be grounds for an investigation of or a disciplinary action against a person or firm that is required to be licensed pursuant to the Texas Geoscience Practice Act to report the information to TBPG. Agencies with overlapping responsibility for overseeing the work of geoscientists should work together to avoid duplication of investigative efforts.

This recommendation is consistent with statutory requirements for TBPG to refer potential violations of persons licensed by other agencies and is similar to the existing statutory requirement for health regulatory agencies to share information of potential violations outside of their jurisdiction. Texas Government Code, Section 774.002, states

"A health care regulatory agency that, in the course of an audit, review, investigation, or examination of a complaint, obtains information pertaining to the complaint that it believes may be grounds for another healthcare regulatory agency to conduct an investigation of or institute a disciplinary proceeding against a health care provider shall forward the information and any subsequently obtained information or final determination regarding the health care provider to the other health care regulatory agency."

TCEQ attributed the development of its internal procedures to uncertainty among some staff of how to proceed with a complaint against a professional geoscientist. TBPG is currently developing a guidance document for TCEQ staff that will explain when a complaint should be filed. Recommendation 4 would amend the Texas Occupations Code to require TBPG to work with appropriate state agencies to educate state employees involved in work

requiring the use of a licensed geoscientist on the complaint process. Statute should also be amended to require appropriate state agencies to work with TBPG on providing this guidance to state employees. This language would be similar to the requirement laid out in Texas Occupations Code, Section 1071.201(a) and (b) for the Board of Professional Land Surveyors to prepare information describing the procedures for filing and resolving complaints and making this information available to appropriate state agencies.

FISCAL IMPACT OF THE RECOMMENDATIONS

It is expected that any costs associated with these recommendations would not be significant and could be absorbed within existing resources. Recommendation 1, requiring TBPG to simplify the process of submitting a complaint, could be addressed by modifying TBPG's website. It is assumed these modifications would be minimal and would be completed using existing resources. Recommendation 2, clarifying TBPG is required to accept a complaint with or without a notary signature, would have no fiscal impact. Recommendation 3, requiring a state agency to forward information regarding a potential violation to TBPG, could result in an increase in investigations by TBPG. Since TBPG already conducts investigations of this type and the number of complaints that may be received in any given year is not known, it is assumed TBPG could absorb this cost. Recommendation 4, requiring TBPG to work with appropriate state agencies to train state employees on when and how to file a complaint, is an expansion of an activity TBPG has already begun and could be completed using existing resources.

The introduced 2014–15 General Appropriations Bill does not include any adjustments as a result of these recommendations.