

BILL ANALYSIS

H.B. 2821
By: Chisum
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Geoscience plays a significant role in the economy and culture of Texas. Texas geoscientists and geological surveying were integral to Texas oil and gas industries during the 20th century. Today, Texas geoscientists are essential to the development of carbon storage practices, pipeline construction, and the enhanced recovery of hydrocarbons. Texas' energy security, environmental safety, and economy depend on proper certification of its geoscientists.

H.B. 2821 strengthens standards in the public practice of geoscience by introducing a formal process for reviewing complaints and conducting investigations related to geoscientists and by creating the criteria for a person to register as a geoscientist in training.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Professional Geoscientists in SECTIONS 2 and 4 of this bill.

ANALYSIS

H.B. 2821 amends the Occupations Code to set forth the following two types of complaints and investigations relating to a violation of provisions regulating geoscientists: complaints received from a member of the public, and complaints and investigations that are initiated by the Texas Board of Professional Geoscientists as a result of information that becomes known to the board or board staff that may indicate a violation. The bill requires the board by rule to prioritize complaints and investigations, and requires adopted rules to provide that: 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, 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.

H.B. 2821 requires a complaint that is initiated by the board or board staff to be in writing and signed by the person who became aware of information that may indicate a violation. The bill requires a complaint to contain sufficient information for the board to determine whether the board has the jurisdiction and authority to resolve the complaint and requires the board to dismiss the complaint if the board does not have the jurisdiction and authority. The bill requires a complaint to 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. The bill requires the board to maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint and specifies that complaint information is not confidential after the date formal charges are filed. The bill provides for the confidentiality of any complaint determined to be frivolous or without merit and other information related to the complaint and establishes that the information is not subject to discovery, subpoena, or other disclosure. The bill provides for a complaint to be considered frivolous if the executive director of the board and investigator, with board approval, determine that the complaint was made for

the likely purpose of harassment and does not demonstrate any apparent harm to any person.

H.B. 2821 requires the board by rule to establish criteria authorizing a person who intends to be a geoscientist to register with the board as a geoscientist in training. The bill sets out provisions relating to procedures for the board's issuance of advisory opinions. The bill specifies that the authority of the board to issue such an opinion does not affect the authority of the attorney general to issue a relevant opinion as authorized by law. The bill establishes a person's reasonable reliance on a written advisory opinion of the board relating to the provision of the law the person is alleged to have violated or a fact situation that is substantially similar to the fact situation in which the person is involved as a defense to prosecution or imposition of an administrative penalty. The bill defines the terms "geoscience firm," "geoscientist in training," and "professional geoscientist."

EFFECTIVE DATE

September 1, 2009.