

BILL ANALYSIS

S.B. 940
By: Wentworth
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Occupations Code provides for the regulation of the public practice of geosciences; 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. The process by which a complaint against a geoscientist is handled is not specific enough and does not allow for the sufficient oversight and regulation of the geoscientist profession. There is no procedure for Texas Board of Professional Geoscientists (TBPG) to initiate an investigation, maintain the confidentiality of the investigation, or issue advisory opinions.

As proposed, S.B. 940 expands the role of TBPG and streamlines the complaint and investigation process outlining the various steps and procedures that are required to be taken. This bill requires TBPG to prioritize by rule complaints and investigations, creating two types of complaints: those received from members of the public and those that are initiated by TBPG as a result of information that becomes known to TBPG. S.B. 940 requires that complaints by the public be in writing, sworn to by the person making the complaint, and filed with the secretary-treasurer; requires that complaints initiated by TBPG be in writing and signed by the person that became aware of the information; and requires that all complaints contain sufficient information for TBPG to determine jurisdiction and authority for TBPG to commence an investigation. This bill also requires that the complaint remain confidential during the investigation and until a formal charge is filed. The bill requires that frivolous complaints remain confidential. The bill requires TBPG to issue advisory opinions and make the opinions available on the Internet. The bill authorizes a person who expresses the intent to become a licensed geoscientist to register with TBPG as a geoscientist in training.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Board of Professional Geoscientists in SECTION 2 (Section 1002.154, Occupations Code) and SECTION 4 (Section 1002.352, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1002.002, Occupations Code, by adding Subdivisions (3-a) and (4-a) and by amending Subdivision (5), to define "geoscience firm," "geoscientist in training," and "professional geoscientist."

SECTION 2. Amends Section 1002.154, Occupations Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Provides that complaints and investigations under this chapter are of two types: complaints received from a member of the public; and complaints and investigations that are initiated by Texas Board of Professional Geoscientists (TBPG) as a result of information that becomes known to TBPG or TBPG staff and that may indicate a violation.

(a-2) Requires TBPG by rule to prioritize complaints and investigations. Requires that rules adopted under this subsection 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 TBPG.

SECTION 3. Amends Section 1002.202, Occupations Code, by amending Subsection (b) and by adding Subsections (c)-(f), as follows:

(b) Requires that a complaint from a member of the public be in writing, sworn to by the person making the complaint, and filed with the secretary-treasurer.

(c) Requires that a complaint that is initiated by TBPG or TBPG staff be in writing, and signed by the person who became aware of information that may indicate a violation.

(d) Requires that a complaint contain sufficient information for TBPG to determine whether TBPG has the jurisdiction and authority to resolve the complaint. Requires TBPG, if TBPG does not have the jurisdiction and authority, to dismiss the complaint. Requires that a complaint have sufficient information for TBPG to commence an investigation, though the amount of information ultimately required for TBPG to determine the validity of the complaint is authorized to be more than the information initially included with the complaint.

(e) Requires TBPG to maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Provides that complaint information is not confidential after the date formal charges are filed.

(f) Provides that for any complaint determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. Provides that the information is not subject to discovery, subpoena, or other disclosure. Provides that a complaint is considered to be frivolous if the executive director and investigator, with TBPG approval, determine that the complaint was made for the likely purpose of harassment and does not demonstrate apparent harm to any person.

SECTION 4. Amends Subchapter H, Chapter 1002, Occupations Code, by adding Sections 1002.352 and 1002.353, as follows:

Sec. 1002.352. GEOSCIENTIST IN TRAINING. Requires TBPG by rule to establish criteria by which an individual who expresses the intent to become a licensed geoscientist under this chapter is authorized to register with TBPG as a geoscientist in training.

Sec. 1002.353. ADVISORY OPINIONS. (a) Requires TBPG, on its own initiative or at the request of any interested person, to prepare a written advisory opinion regarding an interpretation of this chapter or the application of this chapter to a person with respect to a specified existing or hypothetical factual situation.

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

(c) Requires TBPG to number and classify each advisory opinion issued under this subchapter and annually compile a summary of the opinions in a single document that is available on the Internet.

(d) Provides that the authority of TBPG 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) Provides that it is a defense to prosecution or to imposition of an administrative penalty that a person reasonably relied on a written advisory opinion of TBPG 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.

SECTION 5. Effective date: September 1, 2009.