

1-1 By: Wentworth S.B. No. 940
1-2 (In the Senate - Filed February 18, 2009; March 9, 2009,
1-3 read first time and referred to Committee on Natural Resources;
1-4 March 30, 2009, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; March 30, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of the public practice of geoscience.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 1002.002, Occupations Code, is amended
1-11 by adding Subdivisions (3-a) and (4-a) and amending Subdivision (5)
1-12 to read as follows:

1-13 (3-a) "Geoscience firm" means a firm, corporation, or
1-14 other business entity as defined by the board and registered by the
1-15 board to engage in the public practice of geoscience.

1-16 (4-a) "Geoscientist in training" means a person
1-17 registered by the board on the basis of education and who meets
1-18 other requirements established by the board but who is not fully
1-19 qualified to become a licensed geoscientist under this chapter.

1-20 (5) "Licensed geoscientist" or "professional
1-21 geoscientist" means a person who holds a license issued by the board
1-22 under this chapter.

1-23 SECTION 2. Section 1002.154, Occupations Code, is amended
1-24 by adding Subsections (a-1) and (a-2) to read as follows:

1-25 (a-1) Complaints and investigations under this chapter are
1-26 of two types:

1-27 (1) complaints received from a member of the public;
1-28 and

1-29 (2) complaints and investigations that are initiated
1-30 by the board as a result of information that becomes known to the
1-31 board or board staff and that may indicate a violation.

1-32 (a-2) The board by rule shall prioritize complaints and
1-33 investigations. Rules adopted under this subsection must provide
1-34 that:

1-35 (1) a complaint that alleges an action that may harm
1-36 the public takes precedence over a complaint that does not allege an
1-37 action that may harm the public or may harm the public to a lesser
1-38 degree; and

1-39 (2) with regard to complaints that do not allege an
1-40 action that may harm the public, a complaint filed by a member of
1-41 the public takes precedence over a complaint initiated by the
1-42 board.

1-43 SECTION 3. Section 1002.202, Occupations Code, is amended
1-44 by amending Subsection (b) and adding Subsections (c), (d), (e),
1-45 and (f) to read as follows:

1-46 (b) A complaint from a member of the public must be:

1-47 (1) in writing;

1-48 (2) sworn to by the person making the complaint; and

1-49 (3) filed with the secretary-treasurer.

1-50 (c) A complaint that is initiated by the board or board
1-51 staff must be:

1-52 (1) in writing; and

1-53 (2) signed by the person who became aware of
1-54 information that may indicate a violation.

1-55 (d) A complaint must contain sufficient information for the
1-56 board to determine whether the board has the jurisdiction and
1-57 authority to resolve the complaint. If the board does not have the
1-58 jurisdiction and authority, the board shall dismiss the complaint.
1-59 A complaint must have sufficient information for the board to
1-60 commence an investigation, though the amount of information
1-61 ultimately required for the board to determine the validity of the
1-62 complaint may be more than the information initially included with
1-63 the complaint.

1-64 (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.

SECTION 4. Subchapter H, Chapter 1002, Occupations Code, is amended by adding Sections 1002.352 and 1002.353 to read as follows:

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.

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.

SECTION 5. This Act takes effect September 1, 2009.

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