

BILL ANALYSIS

Senate Research Center
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S.B. 405
By: Brown
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DIGEST AND PURPOSE

Currently, Texas does not have unified qualification standards for state agencies to regulate the public practice of geoscience: the study of the earth's origin and history, its soils, rocks, minerals, fossils fuels, solids, fluids, and the natural and introduced agents, forces, and processes that cause changes in and on the earth. As proposed, S.B. 405 sets forth regulations for the public practice of geoscience, establishes the qualification standards for licensed geoscientists, and provides penalties for violation of this Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Professional Geoscientists in SECTION 1(Sections 1.04, 2.09, 4.01, 4.03, 4.05, 4.06, 6.07, 6.12, 6.13, 6.14, 7.01, 8.01, 10.03, and 12.01, Texas Geoscience Practice Act) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Professional Engineers in SECTION 1(Section 1.04, Texas Geoscience Practice Act) of this bill.

Rulemaking authority is expressly granted to the commissioner of licensing and regulation in SECTION 1(Section 1.04, Texas Geoscience Practice Act) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Adopts the Texas Geoscience Practice Act, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. Authorizes this Act to be cited as the Texas Geosciences Act.

Sec. 1.02. DEFINITIONS. Defines "board," "certified geoscientist," "geosciences," "geoscientist," "licensed geoscientist," "practice for the public," "public practice of geoscience," and "responsible charge."

Sec. 1.03. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Professional Geoscientists (board) is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2013.

Sec. 1.04. APPLICATION OF ACT. (a) Defines "driller," "licensed driller," "installer," "licensed installer," "licensed engineer," "practice of engineering," and "professional surveying," for this section.

(b) Provides that this Act does not authorize the practice of professional surveying by a licensed geoscientist. Provides that this Act does not apply to a qualified and registered surveyor who confines the surveyor's practice to acts of surveying allowed under the

Professional Land Surveying Practices Act (Article 5282c, V. T. C. S.).

(c) Provides that this Act does not authorize the practice of engineering by a licensed geoscientist.

(d) Provides that this Act does not require a licensed engineer, or a person acting under the supervision of a licensed 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) Provides that performing certain functions, the performance of which requires engineering education, training, and experience in the application of certain special knowledge, is engineering and is subject to the Texas Engineering Practice Act (Article 3271a, V. T. C. S.).

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

(g) Provides that this Act does not permit a licensed geoscientist to perform certain specified engineering work unless the action is under the supervision of a licensed engineer.

(h) Provides that, with regard to an environmental and pollution remediation project, this Act permits certain specified geoscientific work but does not permit certain specified engineering work to be done by a licensed geoscientist.

(i) Provides that, with regard to a geoscientific investigation of geological conditions affecting an engineered structure, work, or process, this Act permits certain specified geoscientific work but does not permit certain specified engineering work to be done by a licensed geoscientist.

(j) Requires the board and Texas Board of Professional Engineers by rule, memorandum of understanding, or other appropriate procedure or document to jointly resolve any conflict between this Act or a rule adopted under this Act and Article 3271a, V. T. C. S. or a rule adopted under that Act.

(k) Provides that this Act does not authorize a licensed geoscientist to act as or offer to perform services as a driller or installer. Provides that this Act does not apply to a licensed driller or licensed installer who confines the driller's or installer's activities to activities regulated under Chapter 32 or 33 (Water Well Drillers and Water Well Pump Installers, respectively), Water Code.

(l) Requires the board and the commissioner of licensing and regulation by rule, memorandum of understanding, or other appropriate procedure or document to jointly resolve any conflict between this Act or a rule adopted under this Act and Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, or Chapter 32 or 33, Water Code, or a rule adopted under one of those chapters.

SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Sec. 2.01. BOARD MEMBERSHIP. (a) Requires the board to administer this Act.

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

- (c) Requires six members of the board to be licensed geoscientists.
- (d) Requires three members of the board to be members of the public.
- (e) Requires appointments to the board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 2.02. MEMBER ELIGIBILITY. (a) Requires a member of the board to meet certain criteria.

- (b) Provides that a person is not eligible for appointment as a public member of the board if the person or the person's spouse meets certain criteria.

Sec. 2.03. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Defines "society or trade association" in this section.

- (b) Prohibits a person from being a member of the board or 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 the person meets certain specific criteria.

- (c) Prohibits a person from being a member of the board or acting as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyist), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 2.04. TERMS. (a) Provides that members of the board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

- (b) Prohibits a member of the board from serving more than two consecutive full terms.

Sec. 2.05. GROUNDS FOR REMOVAL. (a) Provides that it is a ground for removal from the board that a member meet certain criteria.

- (b) Provides that 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) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the assistant presiding officer who is then required to notify the governor and the attorney general that a potential ground for removal exists.

Sec. 2.06. REIMBURSEMENT FOR TRAVEL EXPENSES. Provides that 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.

Sec. 2.07. OFFICERS. (a) Requires the board to elect biennially from its own membership a presiding officer, assistant presiding officer, and secretary-treasurer. Prohibits a member from holding one of those positions for more than two consecutive two-year periods. Provides that 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) Authorizes the board to 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.

Sec. 2.08. OFFICE. Requires the board to maintain its office in Austin.

Sec. 2.09. MEETINGS. Requires the board to hold at least two regular meetings in each calendar year. Authorizes a special meeting to be held at a time permitted by board rule.

Sec. 2.10. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being 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) Requires the training program to provide the person with certain information.

(c) Provides that 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.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 3.01. EXECUTIVE DIRECTOR. Requires the board to appoint an executive director. Requires the appointed executive director to be responsible for managing the day-to-day affairs of the board, including certain specific activities.

Sec. 3.02. RECEIPTS AND DISBURSEMENTS; ACCOUNT. (a) Requires the executive director to receive, administer, and account for all money received under this Act, and to transfer the money to the comptroller.

(b) Requires all money paid to the board under this Act to be deposited to the credit of the professional geoscientists' fund account (account) in the general revenue fund. Requires the account to be maintained in accordance with the procedures of the comptroller. Provides that the account is subject to audit by the comptroller. Requires interest earned on money deposited to the credit of the account to be credited to the account. Provides that the account is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

(c) Authorizes money in the account to be used only to pay the expenses incurred by the board in the administration and enforcement of this Act.

Sec. 3.03. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policy making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 3.04. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. Requires the executive director or the executive director's designee to provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this Act, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 3.05. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) Requires the executive director or the executive director's designee to develop an intra-agency

career ladder program that addresses opportunities for mobility and advancement of employees within the board. Requires the program to require intra-agency posting of all positions concurrently with any public posting.

(b) Requires the executive director of the executive director's designee to develop a system of annual performance evaluations based on documented employee performance. Requires all decisions regarding merit pay for a board employee to be based on that system.

Sec. 3.06. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Requires the executive director or the executive director's designee to 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) Requires the policy statement to include certain specific information.

(c) Requires the policy statement to be updated annually, reviewed by the Commission on Human Rights for compliance with Subsection (b)(1) of this section, and filed with the governor.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 4.01. GENERAL RULEMAKING AUTHORITY. Requires the board to adopt and enforce rules consistent with this Act and necessary for the performance of its duties.

Sec. 4.02. FEES. Authorizes the board to set reasonable and necessary fees to be charged applicants and license holder under this Act, including certain specific fees. Requires the board to base a fee for examination in a discipline of geoscience on the costs associated with preparing, administering, and grading that examination.

Sec. 4.03. CODE OF PROFESSIONAL CONDUCT. (a) Requires the board by rule to adopt a code of professional conduct that is binding on all license holders under this Act.

(b) Authorizes the board to enforce the code by imposing sanctions as provided by this Act.

Sec. 4.04 . ENFORCEMENT; REFERRAL OF COMPLAINTS AND INVESTIGATIONS. (a) Requires the board to enforce this Act. Authorizes any member of the board to present to a prosecuting officer a complaint relating to a violation of this Act. Authorizes the board, through its members, officers, counsel, or agents, to assist in the trial of a case involving the violation of this Act, subject to the control of the prosecuting officer.

(b) Requires the board, notwithstanding Subsection (a) of this section, to 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) Authorizes the board to administer oaths and affirmations and issue subpoenas to compel the attendance of witnesses and the production of evidence.

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

Sec. 4.05. RECOGNITION OF USE OF DESIGNATIONS. (a) Authorizes the board by

rule to 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 certain specific conditions are met.

(b) Requires the board by rule to recognize certain titles as a legitimate engineering title separate from geoscience, the use of which requires licensure as a professional engineer.

Sec. 4.06. ESTABLISHMENT OF DISCIPLINES. Requires the board by rule to establish the disciplines of geoscience in which a person is authorized to be licensed and the requirements for eligibility for a license in each discipline.

Sec. 4.07. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. Authorizes the board to enter into agreements with licensing or registration boards in other state and other appropriate organizations, societies, associations, and agencies to develop uniform standards for certain purposes.

Sec. 4.08. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. Authorizes the board, in administrating this Act, to carry out certain actions.

Sec. 4.09. ROSTER OF LICENSE HOLDERS. (a) Requires the board to maintain a roster stating the name, discipline of geoscience, and place of business of each licensed geoscientist.

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

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

Sec. 4.10. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENTS EXIST. Requires the board to maintain a list of each state, territory, or possession of the United States, the District of Columbia, 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.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 5.01. PUBLIC INTEREST INFORMATION. Requires the board to prepare and make available certain information to the public and appropriate state agencies.

Sec. 5.02. COMPLAINTS. (a) Authorizes a person to file a complaint alleging a violation of this Act or a rule adopted under this Act.

(b) Requires a complaint to meet certain specific criteria.

Sec. 5.03. RECORDS OF COMPLAINTS. (a) Requires the board to maintain a file on each complaint filed with the board. Requires the file to include certain specific information.

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

Sec. 5.04. COMPLAINT INVESTIGATION AND DISPOSITION. (a) Requires the board to provide to the person filing the complaint and to each person who is the subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

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

Sec. 5.05. PUBLIC PARTICIPATION. Requires the board to 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.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 6.01. LICENSE REQUIRED. (a) Prohibits a person, unless exempted by this Act, from engaging in the public practice of geoscience unless the person holds a license issued under this Act.

(b) Prohibits a person, unless the person is licensed under this Act, from performing certain specific acts.

(c) Prohibits a person from taking 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 Act.

Sec. 6.02. EXEMPTIONS. Sets forth certain activities that do not require a license under this Act.

Sec. 6.03. LICENSE APPLICATION. (a) Requires an applicant for a license under this Act, including an applicant for a temporary or reciprocal license, to apply on a form prescribed by the board that is signed and sworn to by the applicant before a notary public.

(b) Requires the application to include certain specific information.

(c) Requires the application to be accompanied by certain specific items.

Sec. 6.04. EXAMINATIONS. (a) Authorizes the board to prepare, administer, and grade oral and written examinations required or permitted under this Act.

(b) Authorizes the board to 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 Act, if certain conditions are met.

Sec. 6.05. LICENSE ELIGIBILITY. (a) Requires the applicant, to be eligible for a license under this Act, to meet certain criteria.

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

Sec. 6.06. QUALIFYING WORK EXPERIENCE. (a) Requires the board to apply certain specific standards in evaluating the work experience of an applicant for a license under Section

6.05 of this Act.

(b) Authorizes the board to 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 judgement of the board, is comparable to work experience obtained in the practice of geoscience.

(c) Prohibits the board, for purposes of Subsection (a)(3) of this section, from accepting more than two years of full-time graduate study in a discipline of geoscience as qualifying work experience.

Sec. 6.07. RECIPROCAL LICENSE. (a) Authorizes the board by rule to authorize the licensing of a person who has not met the examination requirements of Section 6.05(a)(4) of this Act if the person is licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, the District of Columbia, or a foreign country.

(b) Authorizes the board to 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 Act and who pays the required fees.

Sec. 6.08. TEMPORARY LICENSE. (a) Authorizes the board to issue a temporary license to a person who meets certain criteria.

(b) Requires an applicant for a temporary license to take certain specific actions.

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

Sec. 6.09. WAIVER OF REQUIREMENTS. (a) Authorizes the board, except for the payment of required fees, to 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) Requires each requirement waived under this section and the basis for the waiver to be recorded in the applicant's record and in the proceedings of the board.

Sec. 6.10. CONFIDENTIALITY OF CERTAIN INFORMATION. Provides that a statement made by a person who provides a reference for an applicant for a license under this Act or provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential. Authorizes this privileged and confidential information to be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Provides that confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Sec. 6.11. ISSUANCE OF LICENSE. (a) Requires the board to issue a license to an applicant who meets the requirements of this Act on payment of the applicable license fee.

(b) Requires the license to meet certain criteria.

(c) Provides that 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) Authorizes a licensed geoscientist to engage in the practice of any discipline of geoscience regardless of the discipline of geoscience stated on the person's license.

Sec. 6.12. LICENSE DURATION; EXPIRATION. (a) Provides that a license is valid for a period not to exceed the three years and expires according to a schedule established by board rule.

(b) Provides that on expiration, a license is invalid. Prohibits an invalid license from being renewed except as provided by this Act.

Sec. 6.13. SEAL. (a) Requires the license holder, on issuance of a license, to obtain a seal of a design established by the board bearing certain information.

(b) Requires certain geoscientific documents, as defined by the board, that are offered to the public and prepared or issued by or under the supervision of a licensed geoscientist, in accordance with rules adopted by the board, to include the certain specific information and bear an impression of the license holder's seal.

Sec. 6.14. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. Requires the board to 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.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 7.01. LICENSE RENEWAL. (a) Requires the board, not later than the 60th day before the date the license expires, to notify a license holder of certain specific information.

(b) Requires the board to 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, meets certain conditions.

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

Sec. 7.02. CONTINUING PROFESSIONAL EDUCATION. Authorizes the board, as a condition for renewal of a license, to require each license holder to participate in continuing professional education on a periodic or other basis.

SUBCHAPTER H. PUBLIC PRACTICE OF GEOSCIENCE

Sec. 8.01. PUBLIC PRACTICE OF GEOSCIENCE BY FIRM OR CORPORATION.

(a) Authorizes a firm or corporation to engage in the public practice of geoscience only if certain specific conditions are met.

(b) Authorizes the board to adopt rules relating to the public practice of geoscience by a firm or corporation. Requires rules adopted under this section to recognize that this Act does not apply to a licensed professional engineer or engineering firm that performs service or work that is both engineering and geoscience. Provides that a firm that engages in the practice of both engineering and geoscience is exempt from any firm registration requirements created under this subsection.

(c) Prohibits an individual, firm, or corporation, except as provided by this section, from representing 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 6.13(b) of this Act.

SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 9.01. DENIAL OF LICENSE. (a) Authorizes the board to deny a license to an applicant who fails to satisfy a requirement of this Act, or on a determination by the board that there is probable cause to believe that an applicant has violated certain provisions.

(b) Prohibits the board from issuing 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) Requires the board to 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. Authorizes the applicant, not later than the 30th day after the date of receipt of the notice, to make a written request for a hearing. Provides that in the absence of a request for a hearing, the board's action is final.

Sec. 9.02. GROUNDS FOR DISCIPLINARY ACTION. Authorizes the board to impose appropriate sanctions for certain specific actions.

Sec. 9.03. DISCIPLINARY ACTIONS. (a) Authorizes the board to take certain specific disciplinary actions.

(b) Prohibits the board from imposing a sanction for a ground described by Section 9.02(8) of this Act that exceeds in severity or duration the sanction on which the board's action is based.

Sec. 9.04. RIGHT TO HEARING. Provides that a person is entitled to a hearing before the board may suspend or revoke the person's license.

Sec. 9.05. REINSTATEMENT. (a) Authorizes the board, on application, to 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) Authorizes the board, as a condition for reinstatement, to require certain additional conditions for licensing.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 10.01. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty against a person licensed under this Act or a rule adopted or order issued under this Act.

Sec. 10.02. AMOUNT OF PENALTY. (a) Authorizes the board to include in the amount of the administrative penalty the actual costs of investigation and prosecuting the violation.

(b) Prohibits the amount of the penalty from exceeding \$100 for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Requires the amount of penalty to be based on certain specific criteria.

Sec. 10.03. ADMINISTRATIVE PROCEDURE. (a) Requires the board to adopt rules of procedure for the imposition of an administrative penalty.

(b) Requires rules adopted under this section to conform to the requirements of Chapter 2001 (Administrative Procedure), Government Code.

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

Sec. 10.04. OPTIONS FOLLOWING FINAL ORDER; PAY OR APPEAL. (a) Requires the person, not later than the 30th day after the date the board's order becomes final, to take certain specific actions.

(b) Authorizes a person who acts under Subsection (a)(3) of this section, within the 30-day period, to stay enforcement of the penalty by taking certain actions, or request the court to stay enforcement of the penalty by taking certain actions.

(c) Authorizes the executive director, on receipt of a copy of an affidavit under Subsection (b)(2) of this section, to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that 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.

Sec. 10.05. COLLECTION OF PENALTY. Authorizes the executive director to refer the matter to the attorney general for collection of the penalty if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed.

Sec. 10.06. STANDARD OF JUDICIAL REVIEW. Provides that the order of the board is subject to judicial review under the substantial evidence rule.

Sec. 10.07. REMITTANCE OF PENALTY AND INTEREST. (a) Authorizes the court, if the court sustains the occurrence of the violation, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. Requires the court, if the court does not sustain the occurrence of the violation, to order that a penalty is not owed.

(b) Requires the court, if after judicial review the administrative penalty is reduced or not imposed by the court, to take certain actions after the judgement becomes final.

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

SUBCHAPTER K. OTHER ENFORCEMENT PROVISIONS

Sec. 11.01. INJUNCTION. Authorizes the board to seek an injunction against a violation of this Act or a rule adopted under this Act.

SUBCHAPTER L. TRANSITION

Sec. 12.01. TRANSITION. (a) Requires the governor to make certain initial appointments to the board before November 1, 2001. Sets forth specific term expirations for members appointed by the governor.

(b) Provides that an initial member of the board who is required to be a licensed

geoscientist, notwithstanding Section 2.01(c) of this Act, is eligible for appointment to the board if the member fulfills certain specific requirements. Provides that it is a ground for removal from the board on or after September 1, 2003, that the member has not obtained a license under this Act.

(c) Requires the board to hold its first meeting before January 1, 2002. Requires the board to adopt rules under this Act not later than September 1, 2002.

(d) Provides that a person is not required to obtain a license under this Act until September 1, 2003.

(e) Authorizes a person who is engaged in the public practice of geoscience before September 1, 2003, and who applies for a license under this Act before that date, notwithstanding Subsection (d) of this section, to continue to engage in that practice until the board acts on the person's application. Authorizes a person described by this subsection to be qualified for licensure without passing the written examination described by Section 6.05(a)(4) of this Act if the person fulfills the other requirements of Section 6.05 of this Act.

SECTION 2. Effective date: September 1, 2001, except that Section 6.01 and Subchapter J, Texas Geoscience Practice Act, as adopted by this Act, take effect September 1, 2003.