

SIPES Houston Chapter Review Committee Recommendations

While many of the proposed changes are very benign, the SIPES Houston Chapter Review Committee found several changes that are significant. The main driving force in many of our recommendations is the delegation of responsibilities to the TBPG Staff that should be reserved for the Appointed Board. Our feeling is that the Appointed Board can be held accountable, but the TBPG Staff may not be.

Recommendations:

1. With regards to the Legislative Appropriations Request (LAR). This is a very important submission. We propose that the rule changes include language that requires the TBPG staff to submit the LAR to the Appointed Board of the Texas Board of Professional Geoscientist and that a copy be supplied to every licensee prior to the public hearing held by the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board.

Comment: Legislative Appropriations Request (LAR) is how the agency is funded. The LAR is prepared by the TBPG staff and submitted to the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board. At this time this can be done without the staff submitting the LAR to the Appointed Board for review. We feel that the LAR should be reviewed by the Appointed Board and all of the licensees as a form of checks and balances over the budget process.

2. We would recommend the repeal of §851.30(a)(2). This section deals with firm registration. The last sentence states, "This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience. For the purpose of fees, Geoscience Firms are categorized as either." Federal law states that regulations cannot favor one group over another or create an unequal advantage. Therefore this section violates equal protection under the law.

Comment: Firm registration is a much debated issue, but the law requires a level playing field and the current wording of this section gives an unfair advantage to an engineering firm doing geoscience by not requiring them to register with the TBPG as a firm.

3. With regards to §851.201 Contested Case Hearings, we would recommend that pursuant to Administrative Code (Title 1, Part 7, Chapter 155, Subchapter B) Rule 155.51, no case shall be considered a contested case by the TBPG prior to presentation by the TBPG staff to the Appointed Board of the subject matter of the case. Upon inquiry by the Appointed Board, the Appointed Board shall determine whether or not to authorize the TBPG staff to prepare and file a "Request to Docket Case" with SOAH.

Comment: A few years ago, the TBPG expanded its enforcement authority by allowing the agency staff to self-initiate complaints against licensees and non-licensed persons. At this time a member of the staff has the authority to call a case contested and refer it to SOAH for a full hearing, even if the contention is over timing of a filing and does not involve any complaint that could affect public health or safety. A SOAH hearing can take as much as a year to be resolved. There is opportunity here for the staff to refer cases that should not be referred and only serve to create perceived need for additional regulation. In the mean time a licensee could lose the ability to pursue their livelihood because a filing was a day late. The Appointed Board needs to provide checks and balances to the process.

4. At this time the proposed rules have no rules or policies presented by the Appointed Board regarding the oversight of the TBPG Staff. The Appointed Board needs to create rules for the greater oversight of the TBPG Staff.

Comment: The Appointed Board are the parties that can be held accountable and as such they need to provide oversight to the TBPG Staff. The best way to do this is to articulate rules for the staff to follow.

5. With regards to §851.20 (q)(3) on license registration, the paragraph needs to have the word "non-exempted" inserted so that the paragraph reads as follows:

(3) Provide to the TBPG the following information: the name of every firm, governmental agency, or other organization with which the licensee is employed on a full-time or part-time basis, if the employment includes the **non-exempted** practice of geoscience. If the practice of geoscience includes the public practice of geoscience, the licensee shall report the employer's Geoscience Firm registration number, unless the employer is a governmental agency or otherwise exempt from the requirement of registration with the TBPG.

Comment: It is not practical to continually report full time or part-time work for a sole proprietor who is performing work in the oil industry or other exempted geoscience. A geoscientist may have several part-time jobs throughout the year. The language of this rule could be made more clear and simple by simply requiring the licensed geoscientist to report any full-time or part-time employment by a registered geosciences firm. Also, it is not clear if this duty to report is ongoing, or only at time of license renewal. If ongoing, it may be very burdensome for specialists who are hired on a project-by-project basis.

6. With regards to §851.20 (i) on license registration, the paragraph needs to be clarified with wording as follows:

- (i) Applications are not reviewed until the application and fee have been received in the TBPG office. **TBPG Staff shall immediately notify applicants** of any deficiencies in the application **and in any event** within approximately thirty (30) days after the receipt of the application and fee.

Comment: It should be the ongoing duty of the TBPG to inform applicants of any deficiencies in their application, not just on initial application. It needs to be the duty of the agency to not delay informing the applicant of any delay in the processing of their application.

7. We recommend that the following language be added:

§851.XXX Firm registration - individual entities.

Requirements for firm registration, including fees, are exempted for an assumed name, a sole-proprietorship, or a Texas recognized legal entity (corporation, registered foreign corporation, LLC, etc) comprising only one individual Texas licensed Professional Geoscientist and having no other employees and no contracted employees, provided that the legal entity or assumed name is reported to the TBPG at the time of each license renewal for that individual Texas licensed Professional Geoscientist or upon inquiry by the TBPG.

Comment: By state statute geoscience firms must be registered. However, if a sole practitioner is already licensed, then having to register a firm constitutes double licensing for an individual. This has created a great deal of confusion among individuals working by themselves. It is also very burdensome for both the sole practitioner and for the TBPG to keep up with all of the paperwork. We feel this can be simplified with the language provided and still meet the burden of protecting the public health and safety.

If you agree with any or all of the recommendations of the committee, you are encouraged to submit your comments to the TBPG on these issues, or other proposed rule changes. To read more about it, please see the board's website:

<http://www.tbpg.state.tx.us/board/rules/rule-review>.

The time available for acceptance of comments is very short. Please get your comments in prior to the October 2 deadline.