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It's Time to End Texas' Licensing of Geoscientists

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Key Points

- Geoscientists who are precluded from being licensed are put at a disadvantage in the workforce.
- The lack of regulation for some geoscientific work has not led to any notable harm to the public.
- Efforts to expand licensing requirements will cause additional harm.

Introduction

Occupational licensing is an issue of growing importance to American labor markets. During the 1950s, less than 5 percent of U.S. workers worked in a job that required a license from the state. By 2006 that number had grown to 29 percent.[1] The number of licensed occupations in Texas has grown as well, multiplying more than tenfold over the last 65 years.[2]

The Texas Sunset Commission has developed a series of guidelines for evaluating particular occupational licensing proposals.[3] As the Sunset Commission notes, "[o]nly the least stringent level of regulation needed to protect the public should be implemented," and "[l]icensing of practice is the most stringent regulatory approach."[4] Over-licensing can mean higher costs, diminished job prospects, and an overall stifling of innovation, without any compensating increase in the quality of services provided by practitioners.

Geoscience licensing is no exception. The current licensing scheme imposes arbitrary burdens on practicing geoscientists with little to no corresponding benefit to consumers or the public. While the problems with the current system are numerous, this policy perspective focuses on three: 1) the licensing system does not account for the varied academic backgrounds of many geoscientists; 2) licensing geoscientists does not protect consumers or the public; and 3) licensing stifles entrepreneurs and burdens business.

Background: The Texas Geoscience Practice Act

Licensing of geoscientists in Texas began in 2001 with the passage of the Texas Geoscience Practice Act. Under the law, an individual "may not engage in the public practice of geoscience unless the person holds a license."[5] To enforce the licensing requirement, the TGPA created a Board of Professional Geoscientists. The Licensing Board is made up of nine members, six professional geoscientists and three public members. All members are appointed by the Governor with consent of the Senate, and serve staggered six-year terms.

To receive a license from the Board, an applicant must meet six basic requirements:

1. An applicant must hold a four-year degree in one of the following areas of geoscience disciplines: geology, geophysics, or soil science. This includes at least 30 semester hours in geoscience, 20 of which must be in upper-level courses in a specific discipline.

2. An applicant must pass a Board-approved licensing examination. The Board currently approves the following licensing examinations in Texas: The Fundamentals exam and Practice of Geology exam from the National Association of State Boards of Geology (ASBOG), The Fundamentals exam and Practice examination administered by the Council of Soil Science Examiners (CSSE), and The Texas Geophysics examination.

3. If an applicant holds a license in another state, or has already passed the licensing examination for that state, their license must be submitted to the Board for verification. This must be completed for all states in which the applicant holds a license.

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4. An applicant must have five years of qualifying work experience in a chosen discipline of geosciences, under the supervision of a Professional Geoscientist.

5. An applicant must submit five letters of reference, three of which must be Professional References from a Professional Geoscientist.

6. The applicant must submit a fee of $255.[6]

All of these requirements may be waived at the discretion of the Licensing Board except for the fee.[7] An applicant must make a written request to the board and show good cause, and the board must determine that the applicant is qualified for a license. Licenses are valid for three years.

Importantly, the TGPA created several exemptions from the general licensing requirement. In particular, a license is not required for "geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of private industry."[8] Because of these exemptions, a sizable portion of Texas geoscientists do not fall under the state's licensing requirement.

Licensing System Does Not Account for the Varied Academic Backgrounds of Many Geoscientists

Geoscience is a broad field involving the study of the earth, from atoms and molecules to worldwide planetary events. Because of the broad and varied nature of the field, geoscientists can come from a variety of academic backgrounds, everything from engineering geologists and geochemists to geophysicists, oceanographers, and seismologists.

To receive a geoscience license in Texas, however, an applicant must hold a four-year degree in geology, geophysics, or soil science. As a result, geoscientists who hold degrees in another field, such as climatology or environmental preservation, are precluded under the law from being licensed. The education requirements determined by the Board exclude some fields of geoscience while requiring others to obtain a license. Furthermore, geoscientists who are precluded from being licensed may be put at a disadvantage in the workforce to those who are licensed.

In addition, practicing geoscientists must pass a Board-approved licensing examination such as the ASBOG before they can be licensed. Testing by the National Association of State Boards of Geology, for example, has been criticized for relying on route memorization of formulas which are readily accessible during ordinary practice, and for not focusing enough on basic science skills.[9]

Licensing Geoscientists Does Not Protect Consumers or the Public

Occupational licensing is typically justified as being necessary to protect consumers from low-quality services. This justification does not apply to geoscience, however, as the typical consumer of geoscientific analysis is highly sophisticated and able to devote the necessary resources to ensure quality performance.

Nor is licensing necessary to protect the public, as can be seen by comparing the performance of regulated and unregulated practitioners. Under the TGPA, geoscientists do not need a license to perform geoscientific work "exploring for and developing oil, gas, or other energy resources," so long as this is done for private industry. Poor quality geoscience work is no more dangerous in the non-oil and gas sector than in the oil and gas sector. Yet the lack of regulation for oil and gas work has not led to any notable harm to the public.

The same conclusion can be drawn be comparing the practices of others states. States are split on the licensing of geoscientists. Fifteen states place no substantive restrictions on the practice of geoscience, while the remainder either requiring some form of licensing or certification.[10] Non-regulated states include North Dakota, which like Texas is currently in the midst of an unprecedented oil and gas boom, and Colorado, which only maintains a state geoscientist registry.

States lacking geoscience licensing have not seen noticeable problems resulting from this hands-off approach. For example, a Sunrise Review* by the Colorado Department

* Under Colorado law, proposed legislation regulating occupations or professions must go through a "sunrise review" process. Analogous to Texas' sunset review, the Colorado Department of Regulatory Agencies collects data and issues a report evaluating 1) whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument; 2) whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and 3) whether the public can be adequately protected by other means in a more cost-effective manner. Colo. Rev. Stat. 24-34-104.1.

of Regulatory Agencies found "no evidence of harm being caused to Colorado consumers by the unregulated practice of geologists." The report noted that "[o]f the 28 states with regulation [of geoscientists], four have not received any complaints nor taken any disciplinary action and 10 additional states have not taken any disciplinary action of their few complaints. Complaint activity is low in general and the majority of complaints received involved practicing without a license."[11] Likewise, enforcement actions under Texas' licensing regime have been few and far between.[12]

Licensing Stifles Entrepreneurs and Burdens Business

Texas' licensing regime burdens business in several ways. Companies involved in geoscience work often do business in multiple states, and complying with the Texas system discourages out of state professionals from working in Texas. The TGPA does provide an exemption for individuals who are licensed in another state.[13] But as noted above, not all states license geoscientists or geologists, and no exemption is provided for geoscientists from those states.

Licensing also limits the career opportunities for many employees of existing geoscience-related businesses. Under current law, unlicensed individuals may do some geoscience work, but only if they are under the supervision of a licensed practitioner. The ability of such individuals to start new businesses may therefore be limited, particularly if they do not meet the necessary criteria to be eligible for a license.

Even though the need for the current scope of licensing is questionable, there have been continuous efforts to expand licensing requirements. In September 2011, the Licensing Board's Oil and Gas Practice Workgroup introduced a Petition for Adoption of Rules to expand the current licensing scheme by requiring licenses for various aspects of geoscience practice that are not currently covered. Among other things, the proposed rules would have required a state license for "geoscientific work and reports in support of determination of CO_2 emission reduction credits, including CO_2 sequestration credits," "geoscientific work and reports in support of an oil and gas prospectus, or private placement memoranda, used to seek funding of an oil or gas exploration or development project" and "geoscientific work, including reports and plans, for shale fractguring [sic], including geoscientific work for the monitoring of shale fracturing."[14]

Much of the rationale behind the proposed rules stemmed from a concern that the public, which may rely on the work products of geoscientists to make various decisions, may be led to believe the work was produced by a licensed geoscientist. However, the workgroup did not provide any proof that this has been a serious problem warranting more rules and regulations. The proposed rules created a firestorm of opposition, and were ultimately withdrawn.[15]

Conclusion

The arguments typically used to justify occupational licensing do not apply to practicing geoscientists. Additionally, the experience both of Texas and other states suggests that the current licensing regime is neither necessary nor desirable. Yet, as can be seen, once a licensing scheme such as this is in place it is difficult to keep it from expanding. Texas should eliminate the current licensing requirement and return to the pre-2001 system which served the state well. ✯

Endnotes

[1] Morris M. Kleiner and Alan B. Krueger, "The Prevalence and Effects of Occupational Licensing," NBER Working Paper No. 14308 (Sept. 2008) 10.
[2] Wesley Hottot, "Bureaucratic Barbed Wire: How Occupational Licensing Fences Out Texas Entrepreneurs," Institute for Justice (Oct. 2009) 2.
[3] "Sunset Occupational Licensing Model," Texas Sunset Commission (20 Nov. 2007).
[4] Ibid. at 1.
[5] Tex. Occ. Code 1002.251(a).
[6] Tex. Occ. Code 1002.255.
[7] Tex. Occ. Code 1002.259.
[8] Tex. Occ. Code 1002.252(3).
[9] "2001 Sunrise Review: Geologists," Colorado Department of Regulatory Agencies Office of Policy and Research (15 Oct. 2001) 15.
[10] Based on data from the National Association of State Boards of Geology.
[11] "2001 Sunrise Review: Geologists," Colorado Department of Regulatory Agencies Office of Policy and Research (15 Oct. 2001) 22.
[12] *See*, e.g., Disciplinary Actions, Texas Board of Professional Geologists (accessed 22 Oct. 2012).
[13] Tex. Occ. Code 1002.255.
[14] Petition for Adoption of Rules, Oil and Gas Working Group (Sept. 2011).
[15] Withdrawn Rules, 36 TexReg 7977 (25 Nov. 2011).

About the Author

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Prior to joining TPPF, Josiah worked as an Associate for the firm of Bopp, Coleson & Bostrom in Terre Haute, Indiana, specializing in Constitutional Litigation, and clerked for the Honorable Roger Vinson, a federal district court judge in Pensacola, Florida. He has a B.A. in Government and Philosophy from the University of Texas and a J.D. from the Notre Dame Law School.

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