

Natural Resources Committee

Nebraska Legislature

One Hundred Sixth Legislature

Second Session

Review of Regulations for Geologists

Report as required by Neb. Rev. Stat. § 84-948

Committee Members

Senator Dan Hughes, Chair, District 44

Senator Bruce Bostelman, Vice Chair, District 23

Senator Joni Albrecht, District 17

Senator Suzanne Geist, District 25

Senator Tim Gragert, District 40

Senator Steve Halloran, District 33

Senator Mike Moser, District 22

Senator Dan Quick, District 35

Committee Staff

Andrew Vinton, Legal Counsel

Mandy Mizerski, Committee Clerk

Table of Contents

Occupational Board Reform Actpage 3

Board of Geologists Backgroundpage 3

Board Response page 4

Committee Findings.....page 7

Conclusion page 8

Occupational Board Reform Act

The Nebraska Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

There were five occupational regulations identified under the jurisdiction of the Natural Resources Committee (“Committee”).¹ This report will address the occupation of geology.

The Executive Board of the Legislature created an electronic survey to help each committee review each occupational licensing agency. Survey results for all the committees are published on the Legislature’s website. The Board of Geologist’s response can be accessed here:

https://nebraskalegislature.gov/reports/committeesurvey_view.php

Board of Geologists

The profession of geology in Nebraska is governed by the Nebraska Board of Geologists (“Board”). The Board was established in 1998 through LB 700, the Nebraska Geologist Regulation Act. The bill, which was introduced by Sen. Chris Beutler of Lincoln, was amended into LB 1161. LB 1161 was passed by the Legislature with a vote of 41 yes votes, 0 no votes, and 8 not voting. It was returned by Governor Ben Nelson without approval, but the Legislature overrode the veto with 38 yes votes, 0 no votes, and 11 not voting to put the bill into law. The Nebraska Geologists Regulation Act is now found in Neb. Rev. Stat. §§ 81-3501 through 81-3541.

The Act defines the practice of geology, established education and testing requirements for obtaining a license to practice geology in the state, creates a seven-member Board of Geology, and provides penalties for violations of the Act. The Board is tasked with governing professional conduct of geologists,² overseeing and setting and requirements for the licensure and enrollment of geologists,³ and enforcing the Act.⁴

¹ (1) Wastewater Treatment Plant Operator, Certified; (2) Wastewater Treatment Professional, Certified Onsite; (3) Underground Storage Tank Licenses; (4) Geologist; and (5) Water Well Driller

² Neb. Rev. Stat. § 81-3526.

³ Neb. Rev. Stat. § 81-3527.

⁴ Neb. Rev. Stat. §§ 81-3533 through 81-3537

Each of the seven members on the Board of Geologists is appointed by the Governor to five year rotating terms. The board is required to hold at least one annual meeting, but since 2015 has routinely held four or five.

During the LB 700 hearing in the Nebraska Legislature's Natural Resources Committee, Sen. Beutler and nine other individuals testified in favor of the bill, with no neutral or opposition testimony. The testifiers represented various geologic and engineering societies, trade organizations, and individual firms. The overall rationale for providing board oversight to the activities of geologists are that these activities greatly affect the health and safety of the people of Nebraska. Some of the activities specifically mentioned during the hearing as requiring competent geologic input were cleaning up leaking underground storage tank sites, industrial sites, evaluating landfill and agricultural waste facility siting, and providing information on natural hazards such as landslides, erosion, sedimentation, and earthquakes. Geologists also provide important input on decisions relating the siting of important structures such as dams, power plants, and underground natural gas storage facilities.⁵ Testifiers noted that regulating the profession will help ensure that these important issues receive competent geologic input, and will help maintain the state's quality of water, soil, and air.⁶

According to the Board, errors in geologic analysis may cause a loss of life and/or property, incomplete work that must be repeated, lower cost/benefit ratios resulting from inefficient work, the potential for higher costs of supervision, and legal liability.

Board Response

Neb. Rev. Stat. § 84-948 requires a committee's OBRA report to include the following. The following answers were submitted by the Nebraska Board of Geologists (answers in bold):

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

Title of regulated occupation: Geologist

Name of occupational board: Board of Geologists

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

Geologists Regulation Act, Neb. Rev. Stat. §§ 81-3501 to 81-3541.

⁵ Hearing transcript. Hearing on LB 700. Natural Resources Committee of the Nebraska Legislature, February 28, 1997, pg. 40.

⁶ *Id.* Pg. 45

(c) The number of members of the occupational board and how the members are appointed;

Seven, all appointed by the Governor

(d) The qualifications for membership on the occupational board;

See Neb. Rev. Stat. §§ 81-3520 to 81-3521

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

One; Since F/Y 2015-16, the Board has met four or five times each year.

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

- **FY 2019-2020 Budget: \$ 32,903**
- **FY 2018-2019 Budget: \$ 31,843**
- **FY 2017-2018 Budget: \$ 32,783**
- **FY 2016-2017 Budget: \$ 29,529**
- **FY 2015-2016 Budget: \$ 29,095**

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

84 Certificates Issued

0 Certificates Revoked; 1 Certificate Denied: a geologist was denied reinstatement in July 2017 due to not meeting Nebraska's licensing requirements at the time. The individual has since met the current licensure requirements and now holds a license in good standing.

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

According to LB 700's statement of intent: "LB 700 adopts the Geologists Regulation Act to provide for registration of geologists engaged in the practice of geology affecting public health and safety. The Act defines the practice of geology, establishes requirements for obtaining a license to practice geology in the state, creates a seven-member Board of Geology, and provides penalties for violations of the Act. The intent of LB 700 is to provide appropriate oversight of activities of geologists that affect health and safety in Nebraska."

(i) A statement from the occupational board on the effectiveness of the occupational regulations;

The Board's position is that the occupational regulations it oversees, Title 171 NAC, are effective. The regulations include provisions on initial and comity licensure for geologists, temporary permits, code of practice, use of the licensee seal, organizational practice requirements, enforcement procedures, and clarifications to the Geologists Regulation Act. The Board is committed to keeping its regulations up-to date and concise through regular reviews. Because of national trends in licensure standards, task analyses, and processes for geologists, the Board continually works to keep its rules modernized and up-to-date. Much of today's geological practice affects the health, safety, and welfare of the public, the environment, and the economy and feasibility of engineered works. Thus the public deserves to be protected. Unqualified geologists, who are employed in jobs that affect the public, place an undue risk on the health, safety, and welfare of that public.

To this end, the Nebraska Board is a member of the National Association of State Boards of Geology (ASBOG). Board members and staff attend meetings of this organization to discuss common issues and policies that may affect licensure and the quality of licensees. ASBOG also develops and publishes national model language that state governments can use as a general guide for state laws and a realistic benchmark for providing greater uniformity of qualifications for licensure. In addition, by using the national examination developed by ASBOG and model language, the Nebraska Board simplifies interstate licensure and mobility of geologists. This is demonstrated by the fact that over sixty percent of our active licensees have an address of record outside Nebraska.

Licensure also assures that qualified individuals provide accurate geologic information to the public in the areas of geologic mapping; groundwater resource and development protection (supply/declines, water recharge/storage, pipelines and canals); mineral-resource evaluation; oil and gas development; safe oil, gas, water, or mineral drilling; accurate and reliable information to government agencies for public use (financial and public documents related to economic- and energy-resources); environmental geology issues, land surface stability (faults and fissures, landslides, foundation stability for buildings, dams, bridges and roadways, swelling soils, and karst systems); solid waste siting; toxic, nuclear, and hazardous waste disposal siting ; contaminated soil investigations and remediation; groundwater investigations (spring flows, injection wells and groundwater quality); mined-land reclamation; acid mine drainage suppression and remediation; dam and impoundment construction; highway, roadway, and bridge construction. The application of geologic knowledge and experience are integral to many actions involving public health, safety, and welfare (including financial) as noted herein. Professional geologists apply sound geologic knowledge and procedures that serve to avoid endangerment of the public or the environment.

There is also a difference and necessity of a geological approach over a strictly engineered approach to understanding and managing professional work. There are tasks in which only a trained geologist has experience and, therefore, may have

significant impacts on local citizens. Few other professions affect the public more than geology, especially in collaboration with the drilling, construction, and engineering professions.

Within the Nebraska Board of Geologists rulemaking process, the Board communicates with stakeholders who have expressed interest, including the Nebraska Geological Society, which is the professional society for geologists in the state; and the Board of Engineers and Architects. The Board is committed to keeping these organizations informed in order to ensure the Board's regulations are effectively implemented and not burdensome. The Board also publishes notification of the public hearing on rules promulgation well in advance of the actual hearing(s) in order to facilitate additional professional and public input, further ensuring that the regulations are effective.

- (j) A comparison of whether and how other states regulate the occupation.

See the following:

<https://nebraskalegislature.gov/pdf/SurveyDocs/comparison1604079249.pdf>

Committee Findings

(4) Pursuant to subsection (5) of OBRA, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-
946 considering the following recommended courses of action for meeting such policies:

- (a) To protect the fundamental right of an individual to pursue a lawful occupation;

The testing and licensing requirements and board oversight of geologists does create a barrier to entry for this profession. However, in light of serious risks posed by substandard geologic input, and the critical nature of geologic input to many public health and infrastructure projects, as well as the risk posed to the state's natural resources, this barrier seems warranted. Additionally, the Board has only denied one certificate while issuing eighty-four. The individual that was initially denied a permit later met the licensure requirements and now holds a license in good standing. For these reasons, it appears the Board of Geology is exercising its authority judiciously and has not harmed any individual's right to pursue a lawful occupation.

- (b) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;

Errors in geologic input may cause a loss of life and/or property, incorrect or incomplete work that must be repeated, lower cost/benefit ratios resulting from

inefficient work, potential higher costs of supervision, and legal liability. Licensure and board oversight help mitigate these serious risks and protect against undue risks of harm to public health, safety, and welfare, and is appropriate.

(c) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

The Geologist Regulation Act makes a number of exceptions to ensure that only individual practicing geology as defined in the Act are regulated.

(d) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

The Board maintains license reciprocity, uniform testing, and comity in regulation with other states that are part of the National Association of State Boards of Geology. This facilitates mobility of labor by registered Nebraska geologists who wish to work in other states, and for out-of-state geologists to work in Nebraska. This is evident, as over sixty percent of the Board's active licensees have an address of record outside Nebraska. This increases opportunity and promotes competition in the industry.

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

N/A, no changes recommended.

Conclusion

The licenses, certifications, and registrations overseen by the Board of Geology are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of geologists through licensure and board oversight is appropriate. The Committee recommends that the certification and occupational regulations of geologists be continued without modification.