

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 331

4
5 By: Senator Broadway

For An Act To Be Entitled

9 AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE
10 ARKANSAS CODE PERTAINING TO THE STATE BOARD OF
11 REGISTRATION FOR PROFESSIONAL GEOLOGISTS; AND FOR
12 OTHER PURPOSES.

Subtitle

15 AN ACT TO CLARIFY CERTAIN PROVISIONS OF
16 THE ARKANSAS CODE PERTAINING TO THE
17 STATE BOARD OF REGISTRATION FOR
18 PROFESSIONAL GEOLOGISTS.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23 SECTION 1. Arkansas Code § 17-32-102 is amended to read as follows:
24 17-32-102. Definitions.

25 As used in this chapter, unless the context otherwise requires:

26 (1) "Board" means the State Board of Registration for
27 Professional Geologists;

28 (2) "Geologist" means a person engaged in the practice of
29 geology;

30 (3) "Geologist-in-training" means a person who meets all
31 requirements for registration except length of experience and who has applied
32 for and has been approved by the board for registration. Upon completion of
33 his or her required length of experience and after review by the board, he or
34 she may be granted the title of registered geologist;

35 (4) "Geology" means that science which treats of the earth in
36 general, investigation of the earth's crust and the rocks and other materials



1 which compose it, and the applied science of utilizing knowledge of the earth
2 and its constituent rocks, minerals, liquids, gases, and other materials for
3 the benefit of mankind;

4 (5)(A) "Public practice of geology" means ~~the performance of~~
5 ~~geological service or work such as consultation, investigation, evaluation,~~
6 ~~planning, mapping, and inspection of geological work in which the performance~~
7 ~~is related to public welfare or the safeguarding of life, health, property,~~
8 ~~and the environment, except as specifically exempted by this chapter~~ any
9 professional service, work, or activity requiring formal geological
10 education, training, experience, and the understanding and application of
11 special knowledge of the mathematical, physical, and geological sciences as
12 may be related to those services.

13 (B) A person shall be construed to practice publicly or
14 offer to practice publicly geology if that person practices any branch of the
15 profession of geology; or by verbal claim, sign, advertisement, letterhead,
16 card, or in any other way represents himself or herself to be a geologist;
17 or, through the use of some other title, implies that he or she is a
18 geologist; or represents that he or she is registered under this chapter; or
19 holds himself out as able to perform or does perform any geological services
20 or work recognized as geology+.

21 (C) The State Board of Registration for Professional
22 Geologists shall have authority to expand the definition of "public practice
23 of geology" by rule, as provided in §17-32-204;

24 (6) "Qualified geologist" means a person who is not registered
25 under this chapter but who possesses all the qualifications specified in this
26 chapter for registration;

27 (7) "Registered certified specialty geologist" means a person
28 who is certified as a specialty geologist under this chapter;

29 (8) "Registered geologist" means a person who is registered as a
30 geologist under this chapter;

31 (9) "Responsible charge of work" means the independent control
32 and direction of geological work or the supervision of that work by the use
33 of initiative, skill, and independent judgment; and

34 (10) "Subordinate" means any person who assists a registered
35 geologist or a registered engineer in the practice of geology without
36 assuming the responsible charge of work.

1 SECTION 2. Arkansas Code § 17-32-103 is amended to read as follows:
 2 17-32-103. Penalty.

3 (a) Any person who violates this chapter or who does any of the
 4 following shall be guilty of a misdemeanor, punishable by a fine of not less
 5 than one hundred dollars (\$100) nor more than ~~two hundred dollars (\$200)~~ two
 6 thousand dollars (\$2,000) or imprisonment for a period not exceeding three
 7 (3) months, or both:

8 (1) Publicly practices or offers to publicly practice geology
 9 for others in this state without being registered in accordance with this
 10 chapter;

11 (2) Presents or attempts to use as his or her own the
 12 certificate of registration or the seal of another;

13 (3) Gives any false or forged evidence of any kind to the State
 14 Board of Registration for Professional Geologists or to any member of the
 15 board in obtaining a certificate of registration;

16 (4) Falsely impersonates any other registrant of like or
 17 different name; or

18 (5) Attempts to use an expired or revoked certificate of
 19 registration or attempts to practice at any time during a period when the
 20 board has suspended or revoked his or her certificate of registration.

21 (b) Any person who violates any provision of this chapter or any rule
 22 promulgated under this chapter shall be assessed a civil penalty by the State
 23 Board of Registration for Registered Geologists not to exceed two thousand
 24 dollars (\$2,000).

25 (c) Each day of any violation of this chapter shall constitute a
 26 separate offense.

27
 28 SECTION 3. Arkansas Code § 17-32-104 is amended to read as follows:
 29 17-32-104. Legal and other assistance.

30 (a) The Attorney General or one of his or her assistants shall act as
 31 legal adviser to the State Board of Registration for Professional Geologists
 32 and render legal assistance needed to implement and enforce the provisions of
 33 this chapter and the rules and regulations of the board.

34 (b) The board may employ additional counsel with approval of the
 35 Attorney General and any other necessary assistance to aid in the enforcement
 36 of this chapter and the regulations of the board.

1 (c) ~~The compensation and expenses for additional counsel shall be paid~~
2 ~~from funds of the board~~ The board may pay reasonable expenses incurred by the
3 board for the administration of this chapter.

4
5 SECTION 4. Arkansas Code Title 17, Chapter 32, Subchapter 1 is amended
6 to add an additional section to read as follows:

7 17-32-106. Injunction – Liability of board.

8 (a)(1) Upon proper determination that any person has violated the
9 provisions of this chapter, the State Board of Registration for Professional
10 Geologists may seek an injunction in the proper court of the county in which
11 the violation occurred for the purpose of restraining or prohibiting a
12 violation of this chapter.

13 (2) An injunction obtained pursuant to subdivision (a)(1) of
14 this section shall be issued without bond.

15 (b) The members of the board acting in good faith may not be found
16 personally liable for a proceeding commenced pursuant to this section.

17
18 SECTION 5. Title 17, Chapter 32, Subchapter 1 is amended to add an
19 additional section to read as follows:

20 17-32-107 Claims against board members – Burden of proof.

21 Any person making a claim against a member of the State Board of
22 Registration for Professional Geologists has the burden of proving the
23 absence of good faith.

24
25 SECTION 6. Arkansas Code § 17-32-204 is amended to read as follows:

26 17-32-204. Powers and duties generally.

27 In addition to other powers and duties specified in this chapter, the
28 State Board of Registration for Professional Geologists shall:

29 (1) Adopt, after notice and public hearing, modify, repeal,
30 promulgate, and enforce regulations reasonably necessary to:

31 (A) ~~implement~~ Implement or effectuate its powers and
32 duties; and the regulation of

33 (B) Regulate proceedings before the board; and

34 (C) Define the professional services, works, and
35 activities which constitute the “public practice of geology” as defined in §
36 17-32-102;

1 (2) Be subject to the Arkansas Administrative Procedure Act, §
2 25-15-201 et seq.;

3 (3) Adopt and have an official seal; and

4 (4) Have such other powers and duties as are necessary to
5 implement this chapter.

6
7 SECTION 7. Arkansas Code § 17-32-207(c)(2), concerning the complete
8 roster of all registered geologists or certified geologists-in-training, is
9 amended to read as follows:

10 (2) Copies of the roster shall be ~~mailed to each person so~~
11 ~~registered or certified and~~ placed on file with the Secretary of State and
12 county officials.

13
14 SECTION 8. Arkansas Code § 17-32-302 is amended to read as follows:

15 17-32-302. Persons subject to provisions - Exemptions.

16 (a) Every person, except as specifically exempted by this section, who
17 shall publicly practice or offer to publicly practice geology in this state
18 is subject to this chapter. The following persons are exempt:

19 (1) Persons engaged solely in teaching the science of geology or
20 engaged in nonpublic geologic research in this state;

21 (2) Officers and employees of the United States or this state
22 practicing solely as such officers or employees; and

23 (3) A subordinate to a geologist registered under this chapter,
24 insofar as he or she acts solely in that capacity. This exemption, however,
25 does not permit any subordinate to practice geology for others in his or her
26 own right or to use the title of registered geologist.

27 (b)(1) This chapter does not prohibit one (1) or more geologists from
28 practicing through the medium of a sole proprietorship, partnership, or
29 corporation. In a partnership or corporation whose primary activity consists
30 of geological services, at least one (1) partner or officer shall be a
31 registered geologist.

32 (2) This chapter does not prevent or prohibit an individual,
33 firm, company, association, or corporation whose principal business is other
34 than the public practice of geology from employing a nonregistered geologist
35 to perform nonpublic geological services necessary to the conduct of its
36 business.

1 (3) This chapter shall not be construed to prevent or to affect
2 the following:

3 (A) The practice of any profession or trade for which a
4 license is required under any other law of this state;

5 (B)(i) The practice of or offer to practice geology, ~~when~~
6 ~~the practice does not exceed in the aggregate more than ninety (90) days in~~
7 ~~any calendar year,~~ by a person not a resident of and having no established
8 place of business in this state, if the person is licensed or registered to
9 practice the profession in another state where the requirements for a
10 certificate of registration or license are not lower than those specified in
11 this state for obtaining the registration required for the work, ~~and if, on~~
12 ~~or before entering the state for commencing the work, the nonresident files~~
13 ~~with the State Board of Registration for Professional Geologists a statement~~
14 ~~giving his or her name, residence, the number of his or her license or~~
15 ~~certificate of registration and by what authority it is issued, and, upon the~~
16 ~~completion of the work, a statement of the time engaged in the work within~~
17 ~~this state;~~

18 (ii) The person shall apply to the State Board of
19 Registration for Professional Geologists in writing and, after payment of a
20 fee established by rule not to exceed six hundred dollars (\$600), may be
21 granted a written permit for a prescribed period of time of less than one (1)
22 year to perform a specific practice of geology.

23 (iii) No right to perform other practices of geology
24 shall accrue to a person granted a written permit under this section;

25 (C) The practice by a person not a resident of, and having
26 no established place of business in, this state, or who has recently become a
27 resident of this state, practicing or offering to practice the profession of
28 geology for more than ninety (90) days in any calendar year if the person has
29 filed with the board an application for a certificate of registration and has
30 paid the fee required by § 17-32-307. The practice shall continue only for
31 such time as the board requires for the consideration of the applicant for
32 registration; or

33 (D) The practice of registered professional engineers from
34 lawfully practicing soil mechanics, foundation engineering, geotechnical
35 engineering, hydrology as it pertains to the practice of engineering, and
36 environmental engineering.

1
2 SECTION 9. Arkansas Code § 17-32-304 is amended to read as follows:

3 17-32-304. Minimum qualifications - Ability of applicant - Geologist-
4 in-training certificate.

5 (a) To be eligible for a certificate of registration, an applicant
6 shall meet each of the following minimum qualifications:

7 (1) Be of good ethical character;

8 (2) Have graduated from an accredited college or university
9 ~~which has been approved by the State Board of Registration for Professional~~
10 ~~Geologists with a major in either geology, engineering geology, or geological~~
11 ~~engineering, or an earth science-related major that has been approved by the~~
12 ~~State Board of Registration for Professional Geologists; and or have~~
13 ~~completed thirty (30) semester hours or forty five (45) quarter hours, or the~~
14 ~~equivalent, in geological science courses leading to a major in geology. Of~~
15 ~~these courses, at least twenty four (24) semester hours or thirty six (36)~~
16 ~~quarter hours, or the equivalent, must have been taken in the upper level of~~
17 ~~the undergraduate studies or in the graduate level courses;~~

18 (3)(A) Have at least seven (7) years of professional geological
19 work which shall include either:

20 (i) A minimum of three (3) years of professional
21 geological work under the supervision of a registered geologist except that,
22 prior to July 20, 1987, professional geological work shall qualify under this
23 subdivision if it is under the supervision of a qualified geologist; or

24 (ii) Have a minimum of five (5) years of experience
25 in responsible charge of geological work.

26 (B) The following criteria of education and experience
27 qualify, as specified, toward accumulation of the required seven (7) years of
28 professional geological work:

29 (i) Each year of undergraduate study in the
30 geological sciences shall count as one-half (1/2) year of training up to a
31 maximum of two (2) years, and each year of graduate study shall count as one
32 (1) year of training;

33 (ii) Credit for undergraduate study, graduate study,
34 and graduate courses, individually or in any combination thereof, shall in no
35 case exceed a total of four (4) years toward meeting the requirements for at
36 least seven (7) years of professional geological work as set forth in

1 subdivision (a)(3)(A) of this section;

2 (iii) The board may consider, in lieu of the
3 professional geological work as set out in this section, the cumulative total
4 of professional geological work or geological research of persons teaching at
5 the college or university level if the work or research can be demonstrated
6 to be of a sufficiently responsible nature to be equivalent to the
7 professional requirements of this chapter.

8 (b)(1) The ability of the applicant shall have been demonstrated by
9 his or her having performed the work in a responsible position as determined
10 by the board. The adequacy of the required supervision and experience shall
11 be determined by the board in accordance with standards set forth in
12 regulations adopted by it; and

13 (2) The ability of the applicant shall be demonstrated by the
14 successful passage of such examinations as are established by the board,
15 except that, in place of an examination, the board may find that the
16 receiving of a degree in geologic science may be judged by the board as
17 evidence of sufficient knowledge and skill to qualify for registration.

18 (c)(1) The board may issue a geologist-in-training certificate to any
19 applicant who meets all qualifications, including successful passage of the
20 geological examination, except the required time of professional geological
21 work.

22 (2) An applicant with a geologist-in-training certificate shall
23 be awarded full registration upon presentation of proof that the required
24 time of professional geologic work has been completed and the presentation of
25 names and addresses of three (3) qualified geologists and two (2) persons who
26 can attest to the applicant's personal character and ethics.

27

28 SECTION 10. Arkansas Code § 17-32-307 is amended to read as follows:

29 17-32-307. Fees - Renewal - Date of filing.

30 (a) The schedule of fees is as follows:

31	(1) Application for registered geologist	\$20.00
32	(2) Examination for registered geologist or geologist in-	
33	training.....	20.00
34	(3) (2) Initial or comity registration.....	60.00
35	(4) (3) Geologist-in-training certificate.....	10.00
36	(5) (4) Geologist-in-training certificate renewal fee.....	20.00

1 ~~(6)~~(5) Geologist registration renewal fee
2 a maximum.....60.00
3 per year to be set by the State Board of Registration for Professional
4 Geologists.

5 (6) Temporary work permit fee
6 a maximum of.....600.00
7 per occurrence to be set by the State Board of Registration for Professional
8 Geologists.

9 (b) The registration shall expire ~~one (1) year after the date of~~
10 ~~issuance~~ on a date to be set by rule by the State Board of Registration for
11 Professional Geologists.

12 (c) Late renewal applications submitted during a six-month penalty
13 period following expiration must be accompanied by a fee equal to the renewal
14 fee plus a fifty percent (50%) penalty fee.

15 (d) Registrations not renewed prior to the end of the six-month
16 penalty period shall not be subject to renewal. Any consideration for
17 registration reinstatement after the six-month penalty period shall be at the
18 discretion of the board and requires submission of a reinstatement
19 application with the required reinstatement fee of twice the renewal fee.

20 (e) The date of the filing fee, when transmitted through the mail,
21 shall be that date shown by the post office cancellation mark appearing on
22 the envelope containing the fee.

23

24 SECTION 11. Arkansas Code § 17-32-311 is amended to read as follows:

25 17-32-311. Denial, etc., of registration certificate - Grounds -
26 Procedure.

27 (a) The State Board of Registration for Professional Geologists shall
28 have the power to deny, suspend, revoke, or refuse to renew the certificate
29 of registration of any registrant who is found to have been involved in:

30 (1) The practice of any fraud or deceit in obtaining a
31 certificate of registration;

32 (2) Any gross negligence, incompetence, or misconduct in the
33 practice of geology as a professional geologist;

34 (3) Any felony; ~~or~~

35 (4) ~~The commission of any unlawful act as set forth in this~~
36 ~~chapter~~ Providing false testimony or information to the board;

1 (5) Engaging in dishonorable, unethical, or unprofessional
 2 conduct of a character likely to deceive, defraud, or harm the public;

3 (6) Signing, affixing the professional geologist's seal, or
 4 permitting the professional geologist's seal or signature to be affixed to
 5 any specifications, reports, drawings, plans, design information,
 6 construction documents, calculations, or revisions that have not been
 7 prepared or completely checked by the professional geologist or prepared
 8 under the professional geologist's direct supervision or control;

9 (7) Failing to comply with this chapter or any of the rules
 10 pertaining to this chapter; or

11 (8) Aiding or assisting another person in violating any
 12 provision of this chapter or the rules or regulations pertaining to this
 13 chapter.

14 (b) Any action by the board in this regard shall be after a hearing
 15 held in accordance with the Arkansas Administrative Procedure Act, § 25-15-
 16 201 et seq. Any administrative or judicial review of the action shall
 17 likewise be in accordance with the Arkansas Administrative Procedure Act, §
 18 25-15-201 et seq.

19
 20 SECTION 12. Arkansas Code § 17-32-312 is amended to read as follows:

21 17-32-312. ~~Charges of fraud, etc.~~ Disciplinary action – Procedures.

22 (a) Any person may prefer charges of fraud, deceit, gross negligence,
 23 incompetence, or misconduct against any registrant or nonregistrant. The
 24 charges shall be in writing, shall be sworn to by the person or persons
 25 making them, and shall be filed with the Secretary-treasurer of the State
 26 Board of Registration for Professional Geologists.

27 (b) Unless dismissed by the board as unfounded or trivial or settled
 28 informally, all charges shall be heard by the board within six (6) months
 29 after the date on which the charges were filed.

30 (c)(1) The time and place for the hearings shall be fixed by the
 31 board, and a copy of the charges, together with a notice of the time and
 32 place of the hearing, shall be personally served or mailed to the last known
 33 address of the accused individual holding a certificate of authorization at
 34 least twenty (20) days before the date fixed for the hearing.

35 (2) At any hearing, the accused individual shall have the right
 36 to appear in person or by counsel, or both, to cross-examine witnesses and to

1 produce evidence and witnesses in his or her defense.

2 (3) If the accused individual fails or refuses to appear, the
 3 board may proceed to hear and determine the validity of the charges.

4 (d) If after the hearing a majority of the board votes in favor of
 5 sustaining the charges, the board may:

6 (1) Reprimand the individual;

7 (2) Refuse to issue, restore, or renew a registrant's
 8 certificate of registration;

9 (3) Place a registrant on probation for a period of time; or

10 (4) Suspend or revoke a registrant's certificate of registration
 11 subject to conditions as the board may specify.

12 (e) A registrant or a nonregistrant aggrieved by any action of the
 13 board in levying a fine or denying, suspending, revoke, refusing to issue,
 14 restore, or renew his or her certificate of registration may seek
 15 administrative or judicial review in accordance with the Arkansas
 16 Administrative Procedure Act, § 25-15-201 et seq.

17 (f)(1) In addition to or in lieu of any action under subdivision (d)
 18 of this section, a civil penalty under § 17 -32-103 may be assessed in a
 19 proceeding conducted under this section.

20 (2) Unless the amount of the penalty is paid within fifty (50)
 21 days after the order becomes final, the order shall constitute a judgment and
 22 shall be filed and execution issued in the manner as any other judgment of a
 23 court of record.

24 (g) Upon petition of a registrant, the board may reissue a certificate
 25 of registration upon the approval of a majority of the members of the board
 26 in favor of the reissuance.

27
 28
 29
 30
 31
 32
 33
 34
 35
 36