

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  
4

*As Engrossed: S2/16/05*

# A Bill

SENATE BILL 331

5 By: Senator Broadway  
6  
7

## 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.  
13

## Subtitle

14 AN ACT TO CLARIFY CERTAIN PROVISIONS OF  
15 THE ARKANSAS CODE PERTAINING TO THE  
16 STATE BOARD OF REGISTRATION FOR  
17 PROFESSIONAL GEOLOGISTS.  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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. Arkansas Code § 17-32-204 is amended to read as follows:  
19           17-32-204. Powers and duties generally.

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

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

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

26                   (B) Regulate proceedings before the board; and

27                   (C) Define terms in this chapter that are otherwise  
28 undefined, including, but not limited to, the professional services, works,  
29 and activities that constitute the “public practice of geology” as defined in  
30 § 17-32-102;

31           (2) Be subject to the Arkansas Administrative Procedure Act, §  
32 25-15-201 et seq.;

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

34           (4) Have such other powers and duties as are necessary to  
35 implement this chapter.  
36

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

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

7  
8 SECTION 7. Arkansas Code § 17-32-302 is amended to read as follows:  
9 17-32-302. Persons subject to provisions - Exemptions.

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

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

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

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

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

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

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

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

35 (B)(i) The practice of or offer to practice geology, ~~when~~  
36 ~~the practice does not exceed in the aggregate more than ninety (90) days in~~

1 ~~any calendar year, by a person not a resident of and having no established~~  
2 ~~place of business in this state, if the person is licensed or registered to~~  
3 ~~practice the profession in another state where the requirements for a~~  
4 ~~certificate of registration or license are not lower than those specified in~~  
5 ~~this state for obtaining the registration required for the work, and if, on~~  
6 ~~or before entering the state for commencing the work, the nonresident files~~  
7 ~~with the State Board of Registration for Professional Geologists a statement~~  
8 ~~giving his or her name, residence, the number of his or her license or~~  
9 ~~certificate of registration and by what authority it is issued, and, upon the~~  
10 ~~completion of the work, a statement of the time engaged in the work within~~  
11 ~~this state;~~

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

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

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

27 (D) The practice of registered professional engineers from  
28 lawfully practicing soil mechanics, foundation engineering, geotechnical  
29 engineering, hydrology as it pertains to the practice of engineering, and  
30 environmental engineering.

31  
32 SECTION 8. Arkansas Code § 17-32-304 is amended to read as follows:

33 17-32-304. Minimum qualifications - Ability of applicant - Geologist-  
34 in-training certificate.

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

- 1 (1) Be of good ethical character;
- 2 (2) Have graduated from an accredited college or university  
3 ~~which has been approved by the State Board of Registration for Professional~~  
4 ~~Geologists~~ with a major in either geology, engineering geology, ~~or~~ geological  
5 engineering, or an earth science-related major that has been approved by the  
6 State Board of Registration for Professional Geologists; and ~~or have~~  
7 ~~completed thirty (30) semester hours or forty five (45) quarter hours, or the~~  
8 ~~equivalent, in geological science courses leading to a major in geology. Of~~  
9 ~~these courses, at least twenty four (24) semester hours or thirty six (36)~~  
10 ~~quarter hours, or the equivalent, must have been taken in the upper level of~~  
11 ~~the undergraduate studies or in the graduate level courses;~~
- 12 (3)(A) Have at least seven (7) years of professional geological  
13 work which shall include either:
- 14 (i) A minimum of three (3) years of professional  
15 geological work under the supervision of a registered geologist except that,  
16 prior to July 20, 1987, professional geological work shall qualify under this  
17 subdivision if it is under the supervision of a qualified geologist; or
- 18 (ii) Have a minimum of five (5) years of experience  
19 in responsible charge of geological work.
- 20 (B) The following criteria of education and experience  
21 qualify, as specified, toward accumulation of the required seven (7) years of  
22 professional geological work:
- 23 (i) Each year of undergraduate study in the  
24 geological sciences shall count as one-half (1/2) year of training up to a  
25 maximum of two (2) years, and each year of graduate study shall count as one  
26 (1) year of training;
- 27 (ii) Credit for undergraduate study, graduate study,  
28 and graduate courses, individually or in any combination thereof, shall in no  
29 case exceed a total of four (4) years toward meeting the requirements for at  
30 least seven (7) years of professional geological work as set forth in  
31 subdivision (a)(3)(A) of this section;
- 32 (iii) The board may consider, in lieu of the  
33 professional geological work as set out in this section, the cumulative total  
34 of professional geological work or geological research of persons teaching at  
35 the college or university level if the work or research can be demonstrated  
36 to be of a sufficiently responsible nature to be equivalent to the

1 professional requirements of this chapter.

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

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

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

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

21

22 SECTION 9. Arkansas Code § 17-32-307 is amended to read as follows:

23 17-32-307. Fees - Renewal - Date of filing.

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

25	(1) Application for registered geologist .....	\$20.00
26	<del>(2) Examination for registered geologist or geologist-in-</del>	
27	<del>training.....</del>	<del>20.00</del>
28	<del>(3)</del> (2) Initial or comity registration.....	60.00
29	<del>(4)</del> (3) Geologist-in-training certificate.....	10.00
30	<del>(5)</del> (4) Geologist-in-training certificate renewal fee.....	20.00
31	<del>(6)</del> (5) Geologist registration renewal fee	
32	a maximum.....	60.00

33 per year to be set by the State Board of Registration for Professional  
34 Geologists.

35	<u>(6) Temporary work permit fee</u>	
36	<u>a maximum of.....</u>	<u>600.00</u>



1 per occurrence to be set by the State Board of Registration for Professional  
2 Geologists.

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

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

9 (d) Registrations not renewed prior to the end of the six-month  
10 penalty period shall not be subject to renewal. Any consideration for  
11 registration reinstatement after the six-month penalty period shall be at the  
12 discretion of the board and requires submission of a reinstatement  
13 application with the required reinstatement fee of twice the renewal fee.

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

17  
18 SECTION 10. Arkansas Code § 17-32-311 is amended to read as follows:

19 17-32-311. Denial, etc., of registration certificate - Grounds -  
20 Procedure.

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

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

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

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

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

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

33 (6) Signing, affixing the professional geologist's seal, or  
34 permitting the professional geologist's seal or signature to be affixed to  
35 any specifications, reports, drawings, plans, design information,  
36 construction documents, calculations, or revisions that have not been

1 prepared or completely checked by the professional geologist or prepared  
2 under the professional geologist's direct supervision or control;

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

5 (8) Aiding or assisting another person in violating any  
6 provision of this chapter or the rules or regulations pertaining to this  
7 chapter.

8 (b) Any action by the board in this regard shall be after a hearing  
9 held in accordance with the Arkansas Administrative Procedure Act, § 25-15-  
10 201 et seq. Any administrative or judicial review of the action shall  
11 likewise be in accordance with the Arkansas Administrative Procedure Act, §  
12 25-15-201 et seq.

13  
14 SECTION 11. Arkansas Code § 17-32-312 is amended to read as follows:

15 17-32-312. ~~Charges of fraud, etc.~~ Disciplinary action – Procedures.

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

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

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

29 (2) At any hearing, the accused individual shall have the right  
30 to appear in person or by counsel, or both, to cross-examine witnesses and to  
31 produce evidence and witnesses in his or her defense.

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

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

36 (1) Reprimand the individual;

