

By: Senator(s) Dearing

To: Oil, Gas and Other Minerals

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2913

1 AN ACT TO AMEND SECTION 73-63-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS; TO AMEND SECTION 73-63-7, MISSISSIPPI CODE OF
3 1972, TO CLARIFY WORK NOT REQUIRING REGISTRATION UNDER THE
4 CHAPTER; TO AMEND SECTION 73-63-9, MISSISSIPPI CODE OF 1972, TO
5 DELETE THE REQUIREMENT THAT MEMBERS OF THE BOARD POST A SURETY
6 BOND AND REVISE THE PROCEDURE OF NOMINATING MEMBERS TO THE BOARD;
7 TO AMEND SECTION 73-63-11, MISSISSIPPI CODE OF 1972, TO ALLOW THE
8 BOARD TO ELECT TO WAIVE PER DIEM COMPENSATION; TO AMEND SECTION
9 73-63-37, MISSISSIPPI CODE OF 1972, TO REVISE THE REGISTRATION AND
10 RE-REGISTRATION FEES FOR REGISTERED PROFESSIONAL GEOLOGISTS; TO
11 AMEND SECTION 73-63-43, MISSISSIPPI CODE OF 1972, TO REVISE
12 GROUNDS FOR DISCIPLINARY ACTIONS; TO REPEAL SECTION 73-63-57,
13 MISSISSIPPI CODE OF 1972, WHICH REPEALS SECTIONS 73-63-1 THROUGH
14 73-63-55, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE
15 REGISTERED PROFESSIONAL GEOLOGISTS PRACTICE ACT, EFFECTIVE
16 DECEMBER 31, 2007; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** Section 73-63-5, Mississippi Code of 1972, is
19 amended as follows:

20 73-63-5. The following words shall have the meanings
21 ascribed in this section, unless the context clearly indicates
22 otherwise:

23 (a) "Board" means the board of registered professional
24 geologists created under this chapter.

25 (b) "Certified geologist" means a geologist who has
26 been certified by a professional geologic organization, society or
27 association, including, but not limited to, the American
28 Association of Petroleum Geologists and the American Institute of
29 Professional Geologists, which has certification requirements
30 recognized by the board.

31 (c) "Fund" means the registered professional geologists
32 fund created under Section 73-63-21.

33 (d) "Geologist" means an individual who, by reason of
34 knowledge of geology, mathematics and the supporting physical and

35 life sciences acquired by education and practical experience, is
36 qualified to engage in the practice of geology.

37 (e) "Geologist-in-training" means an individual who has
38 met the academic qualifications established by the board, who has
39 successfully passed a written examination demonstrating a
40 knowledge of the fundamentals of geology, and who has been
41 enrolled as a geologist-in-training by the board.

42 (f) "Geology" means the science which includes the
43 study of the earth and its origin and history. Geology includes
44 the investigation of the earth's constituent rocks, minerals,
45 solids, and fluids, including surface and underground waters,
46 gases and other materials and the study of the natural agents,
47 forces, and processes which cause changes in the earth.

48 (g) "Person" means any individual, trust, firm, joint
49 stock company, public or private corporation (including a
50 government corporation), partnership, association, state, or any
51 agency or institution thereof, municipality, commission, political
52 subdivision of a state or any interstate body, and includes any
53 officer or governing or managing body of any municipality,
54 political subdivision, or the United States or any officer or
55 employee thereof.

56 (h) "Practice of geology" means any professional
57 service to determine and evaluate the geology of the earth
58 requiring geologic education, training, experience and the
59 application of special knowledge of the mathematical, physical and
60 geologic sciences to those services, including, but not limited
61 to, consultation, investigation, evaluation, planning, surveying
62 (unless licensed under Sections 73-13-71 through 73-13-99),
63 mapping, and inspection of geologic work.

64 (i) "Registered professional geologist" means a
65 geologist who has met the academic and experience qualifications
66 established by the board and has been issued a certificate of
67 registration as a registered professional geologist by the board.

68 (j) "Registrant" means any individual who holds a
69 certificate of registration or certificate of enrollment issued
70 under this chapter.

71 (k) "Responsible charge" means the independent control
72 and direction, by use of initiative, skill and independent
73 judgment, of geologic work or the supervision of that work.

74 (l) "Subordinate" means any individual who assists in
75 the practice of geology by a registered professional geologist
76 without assuming the responsible charge of the work.

77 (m) "Specialty" means any branch or discipline of
78 geology that may be recognized under this chapter or regulations
79 promulgated by the board for certifying specialization in a
80 specific geologic field of study or related scientific field of
81 study, or both.

82 (n) "Welfare" means physical and financial welfare.

83 **SECTION 2.** Section 73-63-7, Mississippi Code of 1972, is
84 amended as follows:

85 73-63-7. (1) A person shall not use the term "Registered
86 Professional Geologist" unless that person is registered under
87 this chapter. Unless exempted under subsection (5) of this
88 section, any individual practicing, offering or attempting to
89 practice geology or claiming any specialty in geology, as a
90 professional, business or commercial identification, title, name,
91 representation or claim, or otherwise holding themselves out to
92 the public, as being qualified to practice geology or any of its
93 specialties shall be registered under this chapter.

94 (2) Unless exempted under subsection (5) of this section, no
95 person other than an individual shall engage in the practice of
96 geology unless the geologic work is performed by or under the
97 supervision of one or more registered professional geologists, who
98 is in responsible charge of the work and signs and seals all
99 documents. If the principal business of the person, as determined
100 by the board, is the practice of geology, then a principal,

101 officer or director must be a registered professional geologist
102 and have overall supervision and control of the geologic work
103 performed in this state.

104 (3) Except as exempted under subsection (5) of this section,
105 a person shall be construed to engage in the practice of geology
106 or offer to practice geology under this chapter if that person:

107 (a) Practices any branch of geology;

108 (b) Represents by verbal claim, sign, advertisement,
109 letterhead, card or any other way or implies through the use of
110 the title "geologist" that the person is registered under this
111 chapter;

112 (c) Holds himself or herself out as able to perform or
113 does perform any geologic services or work recognized by the board
114 as the practice of geology; or

115 (d) Makes geologic determinations and evaluations which
116 may affect the public welfare, including, but not limited to, the
117 following activities: protection of groundwater to ensure
118 adequate quality and quantity for present and future generations;
119 prevention and remediation of contamination of the earth, earth
120 materials and water from improper disposal or accidental spills;
121 determination of the suitability and risks in containment and
122 disposal of wastes and hazardous materials, including, but not
123 limited to, landfills, storage tanks and injection wells; siting
124 of boreholes, depth of wells to be drilled, depth of casing and
125 grouting requirements for the construction of monitoring wells or
126 other borings into the earth that may affect one or more aquifers;
127 the suitability for construction projects including excavations,
128 buildings, dams, highways and other structures which may be
129 affected by floods, landslides, earthquakes, sinkholes, erosion,
130 and expansive or contractive earth and earth materials * * *.

131 These geologic determinations and evaluations do not include the
132 design of structures as defined by Title 73, Chapter 13 and other
133 engineering-related activities as clearly defined and mutually

134 agreed upon between the Board of Registered Professional
135 Geologists and the Board of Registration for Professional
136 Engineers and Land Surveyors in the memorandum of understanding
137 authorized under Section 73-63-53.

138 (4) Any geologic report or geologic portion of a report,
139 which incorporates or is based on a geologic study or on geologic
140 data and is required by or supporting compliance with any federal,
141 state or local governmental law, ordinance, rule or regulation
142 shall be prepared by or under the supervision of a registered
143 professional geologist as evidenced by the geologist's signature
144 and seal.

145 (5) The following activities shall not require registration
146 under this chapter:

147 (a) Geologic work performed by an employee or a
148 subordinate of a registered professional geologist, if that work
149 does not include responsible charge of geologic work, provided
150 that the work does not state, portray or infer by any manner or
151 suggestion whatsoever that the employee or subordinate is in
152 responsible charge of the geology or geologic work and that the
153 work is performed under the direct supervision of a registered
154 professional geologist who is responsible for that work and whose
155 signature and seal must be conspicuously affixed thereto;

156 (b) Geologic work performed exclusively in the
157 exploration for and development or proving out of petroleum
158 resources, including the giving of testimony, or preparation and
159 presentation of exhibits or documents regarding petroleum
160 resources for the sole purpose of consideration by, or being
161 placed into evidence before, any administrative agency, judicial
162 tribunal or public hearing, if the testimony, exhibits or
163 documents do not imply that the person is registered under this
164 chapter and that the geologic work does not have an impact on the
165 environment or on the public's health, safety or welfare;

166 (c) The practice of engineering, including the
167 acquisition of engineering data and the utilization of these data
168 in analysis, design and construction by professional engineers
169 appropriately registered in this state;

170 (d) Work customarily performed by physical or natural
171 scientists such as chemists, archaeologists, geographers,
172 oceanographers, pedologists and soil scientists, if that work does
173 not include the planning and execution of geologic investigations,
174 being in responsible charge of geologic work or the drawing of
175 geologic conclusions and making recommendations involving the
176 practice of geology; and

177 (e) Geologic work which does not affect the public
178 welfare as specified under subsection (3)(d) of this section.

179 (6) Nothing in this chapter shall be construed to permit the
180 practice of engineering by a geologist.

181 **SECTION 3.** Section 73-63-9, Mississippi Code of 1972, is
182 amended as follows:

183 73-63-9. (1) There is created the Board of Registered
184 Professional Geologists to administer this chapter. The board
185 shall consist of five (5) registered professional geologists
186 appointed by the Governor from nominees recommended by the
187 committee created in subsection (3) of this section, but
188 geologists initially appointed to the board shall be qualified for
189 registration under this chapter and shall register within the
190 first year of their term. The Governor shall require adequate
191 disclosure of potential conflicts of interest by appointees to the
192 board. The board shall, to the extent practicable, consist of one
193 (1) member appointed from the governmental sector, one (1) member
194 appointed from academia, one (1) member appointed from the
195 geotechnical/environmental industrial sector, one (1) member
196 appointed from the mining/mineral extraction industrial sector,
197 and one (1) member appointed at large. The initial term of the
198 members shall be as follows: Two (2) members shall be appointed

199 for terms of four (4) years, two (2) members shall be appointed
200 for terms of three (3) years, and one (1) member shall be
201 appointed for a term of two (2) years. Following appointment of
202 the initial board, all terms shall be for four (4) years. The
203 term of members shall begin and end on July 1 of the appropriate
204 year regardless of the date of appointment. Upon expiration of a
205 member's term, the Governor may appoint a new member or may
206 reappoint the existing member to one (1) additional term. No
207 member of the board shall serve more than two (2) consecutive
208 terms. Members shall hold office until their successors have been
209 appointed and qualified. Vacancies in the membership of the board
210 shall be filled for the unexpired term by appointment in the same
211 manner as the original appointments. Before assuming the duties
212 of office, each member of the board shall take the oath prescribed
213 in Section 268 of the Constitution. * * * Each member shall
214 receive a certificate of appointment from the Governor. Original
215 appointments to the board shall be made before October 1, 1997.

216 (2) Each member of the board shall be a citizen of the
217 United States, a resident of this state for at least five (5)
218 years immediately preceding that person's appointment, and at
219 least thirty (30) years of age.

220 (3) (a) Except as provided in paragraph (b) of this
221 subsection, the board annually shall appoint a nominating
222 committee. No board member shall participate on the nominating
223 committee during the year in which that member's term
224 expires. * * * The nominating committee shall compile a list of
225 the nominees and submit that list to the registered professional
226 geologists on the roster. Each geologist shall have one (1) vote
227 and shall submit that vote in writing within fifteen (15) days
228 following the mailing of the list of nominees. The executive
229 director, or the president in the absence of an executive
230 director, shall calculate the results and recommend to the

231 Governor the three (3) nominees from the sector in which the
232 vacancy occurs receiving the largest number of votes.

233 (b) The Task Force/Advisory Committee on Geologic
234 Registration shall recommend fifteen (15) nominees to the Governor
235 for appointment to the initial board.

236 **SECTION 4.** Section 73-63-11, Mississippi Code of 1972, is
237 amended as follows:

238 73-63-11. Each member of the board, except a state employee,
239 shall receive per diem in accordance with Section 25-3-69 when
240 actually attending meetings of the board or its committees. Board
241 members shall be reimbursed for traveling expenses in accordance
242 with Section 25-3-41. If the president of the board assumes the
243 powers and duties under Section 73-63-19, the president shall
244 receive per diem for each day spent executing those powers and
245 duties. The board, by majority vote, may elect not to receive per
246 diem compensation which election shall be revocable.

247 **SECTION 5.** Section 73-63-37, Mississippi Code of 1972, is
248 amended as follows:

249 73-63-37. (1) The board shall establish, by rule,
250 application fees which shall not exceed Two Hundred Dollars
251 (\$200.00) for application for registration and One Hundred Dollars
252 (\$100.00) for application for enrollment.

253 (2) In addition to the application fee required under
254 subsection (1) of this section, an applicant shall pay an
255 examination fee before taking the applicable examination. The
256 board shall set a reasonable examination fee for each examination
257 administered by the board to defer the actual cost of the
258 examination.

259 (3) The board shall establish, by rule, registration fees
260 which shall not exceed Two Hundred Dollars (\$200.00) annually for
261 registration as a registered professional geologist and One
262 Hundred Dollars (\$100.00) annually for enrollment as a
263 geologist-in-training.

264 (4) The board shall establish, by rule, fees for the renewal
265 and reissuance of a certificate of registration or certificate of
266 enrollment.

267 **SECTION 6.** Section 73-63-43, Mississippi Code of 1972, is
268 amended as follows:

269 73-63-43. (1) The board, upon satisfactory proof and in
270 accordance with this chapter and rules and regulations of the
271 board, may take the disciplinary actions provided under this
272 chapter against any person for the following reasons:

273 (a) Violation of this chapter, any rule or regulation
274 or written order of the board, any condition of registration or
275 standards of professional conduct;

276 (b) Fraud, deceit or misrepresentation in obtaining a
277 certificate of registration as a registered professional geologist
278 or certificate of enrollment as a geologist-in-training;

279 (c) Gross negligence, malpractice, incompetency,
280 misconduct, or repeated incidents of simple negligence in or
281 related to the practice of geology;

282 (d) Practicing or offering to practice geology, or
283 holding oneself out as being registered or qualified to practice
284 geology, by an individual who is not registered under this
285 chapter, or by any other person not employing a registered
286 professional geologist as required by this chapter;

287 (e) Using the seal of another, or using or allowing use
288 of one's seal on geologic work not performed by or under the
289 supervision of the registered professional geologist, or otherwise
290 aiding or abetting any person in the violation of this
291 chapter; * * *

292 (f) Disciplinary action by any state agency, board of
293 registration or similar licensing agency for geologists or any
294 profession or occupation related to the practice of geology. The
295 sanction imposed by the board shall not exceed in severity or
296 duration the sanction upon which that action is based;

297 (g) Addiction to or chronic dependence on alcohol or
298 other habit-forming drugs or being an habitual user of alcohol,
299 narcotics, barbiturates, amphetamines, hallucinogens or other
300 drugs having similar effect resulting in the impairment of
301 professional or ethical judgment; or

302 (h) Injuring or damaging, or attempting to injure or
303 damage, the professional reputation of another by any means
304 whatsoever; this provision shall not relieve a registered
305 professional geologist from the obligation to expose unethical or
306 illegal conduct to the proper authorities nor shall it preclude
307 confidential appraisals of geologists or other persons or firms
308 under consideration for employment.

309 (2) Any person may bring a complaint alleging a violation of
310 this chapter, any rule or regulation or written order of the
311 board, any condition of registration or standards of professional
312 conduct. Complaints shall be made in writing, sworn to by the
313 person filing the complaint, and filed with the board. The board
314 shall investigate all complaints and upon finding a basis for that
315 complaint, shall notify the accused in writing specifying the
316 provisions of this chapter, rule, regulation or order of the board
317 or the condition or standard alleged to be violated and the facts
318 alleged to constitute the violation. The notice shall require the
319 accused to appear before the board at a time and place to answer
320 the charges. The time of appearance shall be at least thirty (30)
321 days from the date of service of the notice. Notice shall be made
322 by service on the person or by registered or certified mail,
323 return receipt requested, to the last known business or residence
324 address of the accused, as shown on the records of the board.
325 Within fifteen (15) days following receipt of that notice, the
326 accused shall file a written response, admitting, denying, or
327 taking exception to the charges. In the absence of a response or
328 if the charges are admitted or if no exception is taken, the board
329 may take disciplinary action without holding a hearing. A

330 disciplinary action may be settled by the board and the accused,
331 either before or after a hearing has begun.

332 A person who reports or provides information to the board in
333 good faith is not subject to an action for civil damages.

334 (3) Any hearing under this section may be conducted by the
335 board itself at a regular or special meeting of the board or by a
336 hearing officer designated by the board. The hearing officer may
337 conduct the hearings in the name of the board at any time and
338 place as conditions and circumstances may warrant. The hearing
339 officer or any member of the board may administer oaths or
340 affirmations to witnesses appearing before the hearing officer or
341 the board.

342 If any witness fails or refuses to attend upon subpoena
343 issued by the board, refuses to testify or refuses to produce
344 books, papers, reports, documents and similar material, the
345 production of which is called for by a subpoena, the attendance of
346 any witness and the giving of that person's testimony and the
347 production of books, papers, reports, documents and similar
348 material shall be enforced by any court of competent jurisdiction
349 of this state in the manner provided for the enforcement of the
350 attendance and testimony of witnesses in civil cases in the courts
351 of this state.

352 All hearings before the board shall be recorded either by a
353 court reporter or by tape or mechanical recorders and subject to
354 transcription upon order of the board or any interested person.
355 If the request for transcription originates with an interested
356 person, that person shall pay the cost of transcription.

357 The accused shall have the right to be present at the hearing
358 in person, by counsel or other representative, or both. The board
359 may continue or recess the hearing as may be necessary.

360 (4) If a hearing officer conducts the hearing on behalf of
361 the board, the hearing officer shall upon completion have the
362 record of that hearing prepared. The record shall be submitted to

363 the board along with that hearing officer's findings of fact and
364 recommended decision. Upon receipt and review of the record of
365 the hearing and the hearing officer's findings of fact and
366 recommended decision, the board shall render its final decision as
367 provided in subsection (5) of this section.

368 Any person ordered to appear for an alleged violation may
369 request a hearing before a majority of the board. A verbatim
370 record of any previous hearings on that matter shall be filed with
371 the board, together with findings of fact and conclusions of law
372 made by the board based on the record.

373 (5) At the conclusion of the hearing, the board may either
374 decide the issue at that time or take the case under advisement
375 for further deliberation. The board shall render its decision not
376 more than ninety (90) days after the close of the hearing, and
377 shall forward to the last known business or residence address of
378 the accused, by certified or registered mail, return receipt
379 requested, a written statement of the decision of the board.

380 If a majority of the board finds the accused guilty of the
381 charges filed, the board may take any combination of the following
382 actions:

383 (a) Deny the renewal of a certificate of registration
384 or certificate of enrollment;

385 (b) Suspend the certificate of registration or
386 certificate of enrollment of any registrant for a specified period
387 of time, not to exceed three (3) years, or revoke the certificate
388 of registration or certificate of enrollment of any registrant;

389 (c) Censure, reprimand or issue a public or private
390 admonishment to an applicant, a registrant or any other person
391 engaged in the practice of geology under this chapter;

392 (d) Impose limitations, conditions or restrictions upon
393 the practice of an applicant, a registrant or upon any other
394 person engaged in the practice of geology;

395 (e) Require the guilty party to complete a course,
396 approved by the board, in ethics;

397 (f) Impose probation upon a registrant, requiring
398 regular reporting to the board;

399 (g) Require restitution, in whole or in part, of the
400 compensation or fees earned by a registrant or by any other person
401 engaging in the practice of geology; or

402 (h) Assess and levy upon the guilty party a monetary
403 penalty not to exceed Five Thousand Dollars (\$5,000.00) for each
404 violation.

405 (6) Any monetary penalty assessed and levied under this
406 section shall be paid to the board upon the expiration of the
407 period allowed for appeal of that penalty, or may be paid sooner
408 if the guilty party elects. Money collected by the board under
409 this section shall be deposited to the credit of the registered
410 professional geologists fund.

411 When payment of a monetary penalty assessed and levied by the
412 board in accordance with this section is not paid when due, the
413 board may begin and maintain proceedings in its name for
414 enforcement of payment in the chancery court of the county and
415 judicial district of residence of the guilty party and if the
416 guilty party is a nonresident of the State of Mississippi, the
417 proceedings shall be in the Chancery Court of the First Judicial
418 District of Hinds County, Mississippi.

419 (7) The board may assess and impose the costs of any
420 disciplinary proceedings conducted under this section against
421 either the accused, the charging party, or both, as it may elect.

422 (8) The authority of the board to assess and levy the
423 monetary penalties under this section shall not be affected or
424 diminished by any other proceeding, civil or criminal, concerning
425 the same violation or violations, unless provided in this section.

426 (9) If the board determines there is an imminent danger to
427 the public welfare, the board may issue an order for the immediate

428 suspension of a certificate of registration or a certificate of
429 enrollment. The registrant may request a hearing on the matter
430 within fifteen (15) days after receipt of the order of suspension.
431 The board shall file charges as provided in this section within
432 thirty (30) days after the issuance of an order, or the suspension
433 shall be of no further force and effect. If charges are filed,
434 the order of suspension shall remain in effect until disposition
435 of all charges.

436 (10) The board, for sufficient cause, may reissue a revoked
437 certificate of registration or certificate of enrollment, upon
438 written application to the board by the applicant. The
439 application shall be made not less than three (3) years after the
440 revocation. The board may impose reasonable conditions or
441 limitations in connection with any reissuance.

442 (11) In addition to the reasons named in subsection (1) of
443 this section, the board may suspend the certificate of
444 registration or certificate of enrollment of any person for being
445 out of compliance with an order for support, as defined in Section
446 93-11-153. The procedure for suspension of a certificate for
447 being out of compliance with an order for support, and the
448 procedure for the reissuance or reinstatement of a certificate
449 suspended for that purpose, and the payment of any fees for the
450 reissuance or reinstatement of a certificate suspended for that
451 purpose, shall be governed by Section 93-11-157 or 93-11-163, as
452 the case may be. Actions taken by the board in suspending a
453 certificate when required by Section 93-11-157 or 93-11-163 are
454 not actions from which an appeal may be taken under Section
455 73-63-49. Any appeal of a suspension of a certificate that is
456 required by Section 93-11-157 or 93-11-163 shall be taken in
457 accordance with the appeal procedure specified in Section
458 93-11-157 or 93-11-163, as the case may be, rather than the
459 procedure specified in Section 73-63-49. If there is any conflict

460 between Section 93-11-157 or 93-11-163 and this chapter, Section
461 93-11-157 or 93-11-163, as the case may be, shall control.

462 **SECTION 7.** Section 73-63-57, Mississippi Code of 1972, which
463 repeals Sections 73-63-1 through 73-63-55, Mississippi Code of
464 1972, which constitute the Registered Professional Geologists
465 Practice Act, effective December 31, 2007, is repealed.

466 **SECTION 8.** This act shall take effect and be in force from
467 and after July 1, 2006.