

By: Senator(s) Dearing

To: Oil, Gas and Other Minerals

SENATE BILL NO. 2913
(As Sent to Governor)

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 GROUND 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; TO REPEAL SECTION
16 73-13-99, MISSISSIPPI CODE OF 1972, WHICH REPEALS SECTIONS 73-13-1
17 THROUGH 73-13-45 AND 73-13-71 THROUGH 73-13-103, MISSISSIPPI CODE
18 OF 1972, WHICH CREATE THE BOARD OF LICENSURE FOR PROFESSIONAL
19 ENGINEERS AND SURVEYORS AND PRESCRIBE ITS DUTIES AND POWERS,
20 EFFECTIVE JULY 1, 2009; AND FOR RELATED PURPOSES.

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

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

24 73-63-5. The following words shall have the meanings
25 ascribed in this section, unless the context clearly indicates
26 otherwise:

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

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

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

37 (d) "Geologist" means an individual who, by reason of
38 knowledge of geology, mathematics and the supporting physical and
39 life sciences acquired by education and practical experience, is
40 qualified to engage in the practice of geology.

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

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

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

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

68 (i) "Registered professional geologist" means a
69 geologist who has met the academic and experience qualifications

70 established by the board and has been issued a certificate of
71 registration as a registered professional geologist by the board.

72 (j) "Registrant" means any individual who holds a
73 certificate of registration or certificate of enrollment issued
74 under this chapter.

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

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

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

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

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

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

98 (2) Unless exempted under subsection (5) of this section, no
99 person other than an individual shall engage in the practice of
100 geology unless the geologic work is performed by or under the
101 supervision of one or more registered professional geologists, who
102 is in responsible charge of the work and signs and seals all

103 documents. If the principal business of the person, as determined
104 by the board, is the practice of geology, then a principal,
105 officer or director must be a registered professional geologist
106 and have overall supervision and control of the geologic work
107 performed in this state.

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

111 (a) Practices any branch of geology;

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

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

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

135 These geologic determinations and evaluations do not include the

136 design of structures as defined by Title 73, Chapter 13 and other
137 engineering-related activities as clearly defined and mutually
138 agreed upon between the Board of Registered Professional
139 Geologists and the Board of Registration for Professional
140 Engineers and Land Surveyors in the memorandum of understanding
141 authorized under Section 73-63-53.

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

149 (5) The following activities shall not require registration
150 under this chapter:

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

160 (b) Geologic work performed exclusively in the
161 exploration for and development or proving out of petroleum
162 resources, including the giving of testimony, or preparation and
163 presentation of exhibits or documents regarding petroleum
164 resources for the sole purpose of consideration by, or being
165 placed into evidence before, any administrative agency, judicial
166 tribunal or public hearing, if the testimony, exhibits or
167 documents do not imply that the person is registered under this
168 chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252 73-63-37. (1) The board shall establish, by rule,
253 application fees which shall not exceed Two Hundred Dollars
254 (\$200.00) for application for registration and One Hundred Dollars
255 (\$100.00) for application for enrollment.

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

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

267 (4) The board shall establish, by rule, fees for the renewal
268 and reissuance of a certificate of registration or certificate of
269 enrollment.

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

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

276 (a) Violation of this chapter, any rule or regulation
277 or written order of the board, any condition of registration or
278 standards of professional conduct;

279 (b) Fraud, deceit or misrepresentation in obtaining a
280 certificate of registration as a registered professional geologist
281 or certificate of enrollment as a geologist-in-training;

282 (c) Gross negligence, malpractice, incompetency,
283 misconduct, or repeated incidents of simple negligence in or
284 related to the practice of geology;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

383 If a majority of the board finds the accused guilty of the
384 charges filed, the board may take any combination of the following
385 actions:

386 (a) Deny the renewal of a certificate of registration
387 or certificate of enrollment;

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

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

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

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

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

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

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

408 (6) Any monetary penalty assessed and levied under this
409 section shall be paid to the board upon the expiration of the
410 period allowed for appeal of that penalty, or may be paid sooner
411 if the guilty party elects. Money collected by the board under
412 this section shall be deposited to the credit of the Registered
413 Professional Geologists Fund.

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

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

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

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

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

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

445 (11) In addition to the reasons named in subsection (1) of
446 this section, the board may suspend the certificate of
447 registration or certificate of enrollment of any person for being
448 out of compliance with an order for support, as defined in Section
449 93-11-153. The procedure for suspension of a certificate for
450 being out of compliance with an order for support, and the
451 procedure for the reissuance or reinstatement of a certificate
452 suspended for that purpose, and the payment of any fees for the
453 reissuance or reinstatement of a certificate suspended for that
454 purpose, shall be governed by Section 93-11-157 or 93-11-163, as
455 the case may be. Actions taken by the board in suspending a
456 certificate when required by Section 93-11-157 or 93-11-163 are
457 not actions from which an appeal may be taken under Section
458 73-63-49. Any appeal of a suspension of a certificate that is
459 required by Section 93-11-157 or 93-11-163 shall be taken in
460 accordance with the appeal procedure specified in Section
461 93-11-157 or 93-11-163, as the case may be, rather than the
462 procedure specified in Section 73-63-49. If there is any conflict

463 between Section 93-11-157 or 93-11-163 and this chapter, Section
464 93-11-157 or 93-11-163, as the case may be, shall control.

465 **SECTION 7.** Section 73-63-57, Mississippi Code of 1972, which
466 repeals Sections 73-63-1 through 73-63-55, Mississippi Code of
467 1972, which constitute the Registered Professional Geologists
468 Practice Act, effective December 31, 2007, is repealed.

469 **SECTION 8.** Section 73-13-99, Mississippi Code of 1972, which
470 repeals Sections 73-13-1 through 73-13-45 and 73-13-71 through
471 73-13-103, Mississippi Code of 1972, which create the Board of
472 Licensure for Professional Engineers and Surveyors and prescribe
473 its duties and powers, effective July 1, 2009, is repealed.

474 **SECTION 9.** This act shall take effect and be in force from
475 and after July 1, 2006.