MISSISSIPPI LEGISLATURE REGULAR SESSION 2006

By: Senator(s) Dearing

To: Oil, Gas and Other Minerals

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2913

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Practices any branch of geology;

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

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

(d) Makes geologic determinations and evaluations which may affect the public welfare, including, but not limited to, the following activities: protection of groundwater to ensure adequate quality and quantity for present and future generations; prevention and remediation of contamination of the earth, earth materials and water from improper disposal or accidental spills; determination of the suitability and risks in containment and disposal of wastes and hazardous materials, including, but not limited to, landfills, storage tanks and injection wells; siting of boreholes, depth of wells to be drilled, depth of casing and grouting requirements for the construction of monitoring wells or other borings into the earth that may affect one or more aquifers; the suitability for construction projects including excavations, buildings, dams, highways and other structures which may be affected by floods, landslides, earthquakes, sinkholes, erosion, and expansive or contractive earth and earth materials * * *. These geologic determinations and evaluations do not include the design of structures as defined by Title 73, Chapter 13 and other engineering-related activities as clearly defined and mutually

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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