**South Carolina General Assembly**

118th Session, 2009-2010

**A249, R310, S1148**

**STATUS INFORMATION**

General Bill

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Introduced in the House on May 4, 2010

Last Amended on June 1, 2010

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Governor's Action: June 11, 2010, Signed

Summary: Soil classifiers

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/9/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\02-09-10.docx)‑7

2/9/2010 Senate Referred to Committee on **Labor, Commerce and Industry** [SJ](file:///h:\SJ%20Archive\2010\02-09-10.docx)‑7

4/27/2010 Senate Committee report: Favorable with amendment **Labor, Commerce and Industry** [SJ](file:///h:\SJ%20Archive\2010\04-27-10.docx)‑10

4/28/2010 Scrivener's error corrected

4/28/2010 Senate Committee Amendment Amended and Adopted [SJ](file:///h:\SJ%20Archive\2010\04-28-10.docx)‑48

4/28/2010 Senate Read second time [SJ](file:///h:\SJ%20Archive\2010\04-28-10.docx)‑48

4/29/2010 Senate Amended [SJ](file:///h:\SJ%20Archive\2010\04-29-10.docx)‑28

4/29/2010 Senate Read third time and sent to House [SJ](file:///h:\SJ%20Archive\2010\04-29-10.docx)‑28

5/4/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\05-04-10.docx)‑30

5/4/2010 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h:\HJ%20Archive\2010\05-04-10.docx)‑31

5/6/2010 House Recalled from Committee on **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑31

5/6/2010 House Referred to Committee on **Labor, Commerce and Industry** [HJ](file:///h:\HJ%20Archive\2010\05-06-10.docx)‑31

5/26/2010 House Committee report: Favorable with amendment **Labor, Commerce and Industry** [HJ](file:///h:\HJ%20Archive\2010\05-26-10.docx)‑3

6/1/2010 House Amended [HJ](file:///h:\HJ%20Archive\2010\06-01-10.docx)‑40

6/1/2010 House Read second time [HJ](file:///h:\HJ%20Archive\2010\06-01-10.docx)‑40

6/2/2010 House Read third time and returned to Senate with amendments [HJ](file:///h:\HJ%20Archive\2010\06-02-10.docx)‑6

6/3/2010 Senate Concurred in House amendment and enrolled [SJ](file:///h:\SJ%20Archive\2010\06-03-10.docx)‑57

6/7/2010 Ratified R 310

6/11/2010 Signed By Governor

7/1/2010 Effective date 06/11/10

7/8/2010 Act No. 249

**VERSIONS OF THIS BILL**

[2/9/2010](file:///p:\pprever\2009-10\1148_20100209.docx)

[4/27/2010](file:///p:\pprever\2009-10\1148_20100427.docx)

[4/28/2010](file:///p:\pprever\2009-10\1148_20100428.docx)

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[4/29/2010](file:///p:\pprever\2009-10\1148_20100429.docx)

[5/26/2010](file:///p:\pprever\2009-10\1148_20100526.docx)

[6/1/2010](file:///p:\pprever\2009-10\1148_20100601.docx)

(A249, R310, S1148)

**AN ACT TO AMEND CHAPTER 28, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF LANDSCAPE ARCHITECTS, SO AS TO CONFORM THE CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK OF CHAPTER 1, TITLE 40 FOR PROFESSIONS AND OCCUPATIONS UNDER THE ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; AND, AMONG OTHER THINGS, TO TRANSFER THE OVERSIGHT AND REGULATION OF LANDSCAPE ARCHITECTS FROM THE DEPARTMENT OF NATURAL RESOURCES TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO CREATE THE BOARD OF LANDSCAPE ARCHITECTURAL EXAMINERS, TO PROVIDE FOR ITS MEMBERS, POWERS, AND DUTIES, AND TO TRANSFER THE POWERS AND DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES TO THE BOARD; TO PROVIDE THAT LANDSCAPE ARCHITECTS MUST BE LICENSED RATHER THAN REGISTERED, TO PROVIDE FOR AN EMERITUS LANDSCAPE ARCHITECT, AND TO FURTHER PROVIDE THAT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION SHALL ADMINISTER THE PROGRAM FOR LICENSURE OF LANDSCAPE ARCHITECTS; TO REVISE CERTAIN LICENSURE REQUIREMENTS; TO FURTHER PROVIDE FOR A FIRM TO OBTAIN A CERTIFICATE OF AUTHORIZATION TO ALLOW AN INDIVIDUAL LANDSCAPE ARCHITECT TO PRACTICE THROUGH A FIRM OFFERING LANDSCAPE ARCHITECT SERVICES; AND TO AMEND CHAPTER 65, TITLE 40, RELATING TO THE REGULATION OF PROFESSIONAL SOIL CLASSIFIERS, SO AS TO CONFORM THIS CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK OF CHAPTER 1, TITLE 40 FOR PROFESSIONS AND OCCUPATIONS UNDER THE ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; AND, AMONG OTHER THINGS, TO PROVIDE THAT PERSONS ENGAGING IN PROFESSIONAL SOIL CLASSIFICATION MUST BE LICENSED, RATHER THAN REGISTERED; TO REVISE QUALIFICATIONS FOR LICENSURE; TO PROVIDE GRANDFATHERING PROVISIONS FOR REGISTERED PROFESSIONAL SOIL CLASSIFIERS TO BECOME LICENSED PROFESSIONAL SOIL CLASSIFIERS UPON THE NEXT RENEWAL OF THEIR REGISTRATION; AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PROFESSIONAL SOIL CLASSIFIERS; AND TO REQUIRE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION TO PROVIDE THE GENERAL ASSEMBLY WITH CERTAIN FINANCIAL INFORMATION AND ADMINISTRATIVE COSTS ON EACH PROFESSION AND OCCUPATION UNDER THE DEPARTMENT.**

Be it enacted by the General Assembly of the State of South Carolina:

**Licensure and regulation of landscape architects**

SECTION 1. Chapter 28, Title 40 of the 1976 Code is amended to read:

“CHAPTER 28

Landscape Architects

Section 40‑28‑5. Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to the profession regulated under this chapter.

Section 40‑28‑10. (A) There is created the Board of Landscape Architectural Examiners. The Department of Labor, Licensing and Regulation shall administer the provisions of this chapter.

(B) The Governor shall appoint a board of five licensed landscape architects and two members of the general public.

(C) A professional member of the board must be a licensed landscape architect who has been actively engaged in the practice of landscape architecture for a period of at least five years and who has been responsible for landscape architecture for at least three years. The two members of the public may not be engaged in the practice of landscape architecture, have no financial interest in the profession of landscape architecture, and have no immediate family member in the profession of landscape architecture.

(D) At the end of their respective terms, successors must be selected in the same manner and appointed for terms of four years and until their successors are appointed and qualify. The Governor may replace a board member for cause. An appointment to fill a vacancy on the board is for the balance of the unexpired term in the manner of the original appointment.

Section 40‑28‑20. In addition to the definitions provided in Section 40‑1‑20, as used in this chapter, unless the context indicates otherwise:

(1) ‘Board’ means the Board of Landscape Architectural Examiners.

(2) ‘Department’ means the Department of Labor, Licensing and Regulation.

(3) ‘Emeritus landscape architect’ means a landscape architect who has been licensed for ten consecutive years or longer and who is sixty‑five years of age or older and who is not engaging or offering to engage in the practice of landscape architecture as defined in this section.

(4) ‘Firm’ means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture, or other legally constituted organization that practices or offers to practice landscape architecture.

(5) ‘Landscape architect’ means a person licensed to practice landscape architecture in this State.

(6) ‘Landscape architecture’ means the performance of professional services, such as consultation, investigation, research, planning, design, preparation of drawings and specifications, and responsible inspection in connection with the development of land areas where, and to the extent that, the dominant purpose of the services is the preservation, enhancement, or determination of proper site design, natural land features, planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, the setting of grades and determining drainage and providing for drainage structures, and the consideration and determining of environmental problems. This practice includes the design of tangible objects, drainage structures and systems, and features as are incidental and necessary to an overall or ongoing landscape plan and site design, and the landscape architect may certify the design of the tangible objects, drainage structures and systems, features as to structural soundness and as to compliance with all requirements and standards of a government or subdivision of it. This practice does not include the design of structures, drainage structures and systems, and features which are not incidental and necessary to an overall landscape plan and site design and which have separate and self‑contained purposes such as are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final plats for official approval or recordation. Nothing contained in this definition precludes a duly licensed landscape architect from performing the services described in the first sentence of this definition in connection with the settings, approaches, or environment for buildings, structures, or facilities. Nothing contained in this chapter may be construed as authorizing a landscape architect to engage in the practice of architecture, engineering, or surveying as these terms are defined in Section 40‑28‑210 of this chapter, except that a landscape architect may prepare and certify all design, grading, drainage, and construction plans for roads and site‑related projects which are incidental and necessary to an overall or ongoing landscape plan and site design.

(7) ‘Related field’ means architecture, civil engineering, horticulture, or other field as determined appropriate by the board.

(8) ‘Responsible charge’ means direct control and personal supervision of landscape architecture.

Section 40‑28‑30. (A) In order to safeguard public welfare, health, and property and to promote public good, a person practicing or offering to practice landscape architecture privately or in public service must submit evidence that he is qualified to practice and must become licensed as provided in this chapter. It is unlawful for a person to practice landscape architecture or to use the term or title ‘Landscape Architect’ unless duly licensed under the provisions of this chapter.

(B) To be licensed as a landscape architect in this State an applicant must be able to read and write the English language and:

(1) be a graduate of an accredited landscape architectural curriculum approved by the department and have had two years of varied landscape architectural experience under the supervision of a landscape architect licensed under this chapter or other qualified person, or experience approved by the board, and satisfactorily pass the written examination administered by the Council of Landscape Architectural Registration Boards or an equivalent examination;

(2) be a graduate of a nonaccredited curriculum or a four‑year college with a degree in a related field, as considered appropriate by the board and have had at least five years of varied landscape architectural experience under the supervision of a landscape architect licensed under this chapter, or other qualified person, or experience approved by the board, and satisfactorily pass the written examination administered by the Council of Landscape Architectural Registration Boards or an equivalent examination;

(3) hold a license to practice landscape architecture issued upon examination by a legally constituted board of examiners of another state or the District of Columbia, or a territory or possession of the United States and if requirements of the state, district, territory, or possession in which the applicant is licensed are substantially equivalent to those of this State; or

(4) submit certification documents from the Council of Landscape Architectural Registration Boards (CLARB) verifying his qualifications for licensure, and an individual holding such a certification may be accepted at the discretion of the department.

Section 40‑28‑40. The department shall prescribe and furnish an application for licensure that an applicant must use to apply for a license under this chapter.

Section 40‑28‑50. A landscape architect, upon licensure, shall obtain a seal of the design authorized by the board, bearing the name of the licensee, number of certificate or license, and the legend ‘South Carolina Registered Landscape Architect’ or ‘South Carolina Licensed Landscape Architect’. The seal only may be used while the licensee’s certificate or license is in full force and effect. Nothing in this chapter may be construed to authorize the use or acceptance of the seal of the landscape architect in lieu of the seal of an architect, engineer, or surveyor.

Section 40‑28‑60. (A) A license issued under this chapter must be renewed every two years on or before a date set by the department upon the payment of a renewal fee pursuant to Section 40‑28‑80 and evidence of twenty hours of continuing education as established by the board in regulation. An emeritus landscape architect is exempt from these continuing education requirements.

(B) A licensee who allows his or her license to lapse for less than one year by failing to renew the license in accordance with this section may be reinstated by the department upon satisfactory explanation by the licensee of failure to renew the license and upon payment of a reinstatement fee and the current renewal fee, as established by Section 40‑28‑80.

(C) If a license has lapsed for more than two years, the applicant must reapply for licensure. A person practicing as a landscape architect in this State during the time that his or her license has lapsed has engaged in unlicensed practice and is subject to penalties provided for in this chapter.

(D) An emeritus landscape architect who wishes to return to active practice shall complete continuing education requirements for an exempted renewal period, not to exceed a total of forty hours of continuing education and upon payment of a reinstatement fee and the current renewal fee, as established by Section 40‑28‑80.

Section 40‑28‑70. (A) The practice of or offer to practice landscape architecture through a firm is permitted only through entities holding a valid certificate of authorization issued by the board. For the purposes of this section, a certificate of authorization is also required for a firm practicing in this State under a fictitious name. However, when an individual is practicing landscape architecture in his name as individually licensed, that person is not required to obtain a certificate of authorization.

(B) The practice or offer to practice of landscape architecture by an individual licensed under this chapter through a firm offering landscape architecture services to the public is permitted if:

(1) one or more of the corporate officers, in the case of a corporation, or one or more of the principal owners, or a full‑time employee, in the case of other firms, are designated as being responsible for the professional services regulated by the board and are licensed under this chapter;

(2) all personnel of the firm who act on behalf of the firm as landscape architects in this State are licensed under this chapter; and

(3) the firm has been issued a certificate of authorization by the board as required by this section.

(C) Before the issuance of a certificate of authorization, the board must be in receipt of the firm’s appropriate documentation issued by the Secretary of State.

(D) A firm desiring a certificate of authorization shall file with the board an application on forms provided by the board accompanied by the registration fee as provided in Section 40‑28‑80. A certificate of authorization must be renewed biennially. A renewal form provided by the board must be completed and submitted with the biennial registration fee, the fee being an amount as provided in Section 40‑28‑80.

(E) A disciplinary action against a firm must be administered in the same manner and on the same grounds as disciplinary action against an individual. A firm may not be relieved of responsibility for the conduct or acts of its agents, officers, or employees by reason of its compliance with this section, and an individual practicing landscape architecture is not relieved of responsibility for professional services performed by reason of his employment or relationship with the firm.

(F) Nothing in this section may be construed to prohibit firms from joining together to offer landscape architectural services to the public, if each separate entity providing the services in this State otherwise meets the requirements of this section. For firms practicing as a professional corporation under the laws of this State, the joint practice of landscape architecture with the professions of architecture, engineering, surveying, and geology is specifically approved by the board.

(G) If the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for professional landscape architectural services. The board, however, may refuse to issue a certificate or suspend or revoke an existing certificate for due cause. A person or firm aggrieved by an adverse determination of the board may file an appeal as provided for in this chapter.

(H) Nothing in this section may be construed to mean that a firm may practice or offer to practice landscape architecture without meeting individual licensure.

Section 40‑28‑80. (A) The program for licensure of landscape architects must be administered by the Department of Labor, Licensing and Regulation in accordance with Section 40‑1‑50.

(B) The department annually shall prescribe reasonable fees, not to exceed the following prescribed limits, in an amount sufficient to pay for the costs of administering the provisions of this chapter in the following categories:

(1) Initial license fee $ 50.00

(2) Annual license renewal fee $100.00

(3) Initial certificate of authorization fee $200.00

(4) Annual certificate of authorization renewal fee $200.00

(5) Temporary license fee $100.00

(6) Initial examination fee ‑ cost of exam $200.00

(7) Examination retake fee ‑ cost of section(s) $100.00

(8) File transfer fee $ 50.00

(9) Duplicate license/certificate fee $ 25.00

(10) Late fee $ 20.00

An additional amount not to exceed one hundred dollars may be charged each out‑of‑state applicant in each of the above categories.

Section 40‑28‑90. The board may promulgate regulations necessary to carry out the provisions of this chapter.

Section 40‑28‑100. In addition to the powers provided in Chapter 1, Title 40, the board or department may apply in the name of the State for relief by injunction to enforce the provisions of this chapter or to restrain a violation of this section. In these proceedings, the party seeking injunctive relief need not allege or prove that no adequate remedy at law exists or that substantial or irreparable damage would result from the continued violation. A member of the board or employee of the department may not be personally liable under this proceeding.

Section 40‑28‑110. An investigation must be conducted in accordance with Section 40‑1‑80.

Section 40‑28‑120. Cease and desist orders and equitable relief may be obtained in accordance with Section 40‑1‑100.

Section 40‑28‑130. In addition to the grounds provided in Section 40‑1‑110, a person holding a license or certificate under this chapter may be subject to discipline for:

(1) practicing in violation of the provisions of this chapter;

(2) obtaining the certificate or license by fraud or misrepresentation;

(3) aiding or abetting, in the practice of landscape architecture, a person not authorized to practice landscape architecture under the provisions of this chapter;

(4) being found guilty of fraud or deceit, negligence, wilful misconduct, or gross incompetence in the practice of landscape architecture; or

(5) affixing his seal to a plan, drawing, specification, or other instrument of service that has not been prepared by him or under his immediate and responsible direction or has permitted his name to be used for the purpose of assisting a person, not a landscape architect, to evade the provisions of this chapter.

Section 40‑28‑140. Upon determination by the board that one or more of the grounds for discipline exists, the board may impose a sanction person pursuant to Sections 40‑1‑110 and 40‑1‑120.

Section 40‑28‑150. The board may deny licensure to an applicant based on:

(1) the same grounds for which it may take disciplinary action against a licensee; and

(2) his prior criminal record as provided in Section 40‑1‑140.

Section 40‑28‑160. A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license to practice in accordance with and subject to the provisions of Section 40‑1‑150.

Section 40‑28‑170. A person found in violation of this chapter or a regulation promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case pursuant to Section 40‑1‑170.

Section 40‑28‑180. A cost and fine imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180. A person against whom a cost or fine is levied may not be eligible for the issuance or reinstatement of an authorization to practice until the cost or fine has been paid in full.

Section 40‑28‑190. An investigation and proceeding conducted under this chapter is confidential and all communications are privileged as provided in Section 40‑1‑190.

Section 40‑28‑200. The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter or a regulation promulgated under this chapter. For a violation the administrative law judge may impose a fine of no more than ten thousand dollars.

Section 40‑28‑210. This chapter may not be construed to require a license under this chapter for:

(1) the practice of landscape architecture by a person who acts under the supervision of a licensed landscape architect or by an employee of a person lawfully engaged in the practice of landscape architecture and who in either event does not assume responsible charge of design or supervision;

(2) the practice of architecture by a duly licensed professional architect and the performing of landscape architectural work by a licensed architect or by an employee under supervision of a licensed architect, when this work is incidental to their practice;

(3) the practice of engineering by a duly licensed professional engineer and the performing of landscape architectural work by a licensed engineer or by an employee under supervision of a licensed engineer, when this work is incidental to their practice;

(4) the practice of surveying by a duly licensed professional surveyor and the performing of landscape architectural work by a licensed professional surveyor or by an employee under supervision of a licensed professional surveyor, when this work is incidental to their practice;

(5) the practice of landscape architecture by an employee of the United States or South Carolina Government while engaged within this State in the practice of landscape architecture for the government or projects sanctioned by or totally sponsored by the government;

(6) planning as customarily done by regional or urban planners;

(7) an arborist, forester, gardener, home builder, or horticulturist; and

(8) a nurseryman, general or landscape contractor, such practice to include design, planning, location, and arrangements of plantings or other ornamental features.

Section 40‑28‑220. The functions, powers, duties, responsibilities, and authority statutorily exercised by the Department of Natural Resources concerning the registration and regulation of landscape architects are transferred to the board.”

**Licensure and regulation of soil classifiers**

SECTION 2. A. Chapter 65, Title 40 of the 1976 Code is amended to read:

“CHAPTER 65

Soil Classifiers

Section 40‑65‑5. Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to professional soil classifiers regulated pursuant to this chapter.

Section 40‑65‑10. (A) The department shall serve as the agency of licensure for professional soil classifiers and shall administer the provisions of this chapter.

(B) The department shall appoint an advisory council of five qualified professional soil classifiers, who must have the qualifications required in Section 40‑65‑30, to recommend licensure for those applicants eligible to become licensed soil classifiers and to recommend certification for those applicants eligible to become a soil‑classifier‑in‑training. Each member of the council must be a professional soil classifier who has been actively engaged in the practice of soil classifying for a period of at least ten years and must have been in responsible charge of soil classification for at least six years.

Section 40‑65‑20. In addition to the definitions provided in Section 40‑1‑20, as used in this chapter, unless the context or subject matter indicates otherwise:

(1) ‘Department’ means the Department of Labor, Licensing and Regulation.

(2) ‘Kind of soil’ means a group of natural bodies that has a discrete combination landscape, morphological, chemical, and physical properties.

(3) ‘Practice of soil classifying’ and ‘practice of professional soil classifying’ means any service or work, the adequate performance of which requires education in the physical, chemical, biological, and soil sciences, training and experience in the application of the special knowledge of these sciences to soil classification, soil classification by accepted principles and methods, investigation, evaluation and consultation on the effect of measured, observed, and inferred soil properties upon various uses, the preparation of soil descriptions, maps and reports and interpretive drawings, maps and reports of soil properties and the effect of soil properties upon various uses, and the effect of various uses upon kinds of soil, any of which embraces this service or work, either public or private, incidental to the practice of soil classifying.

A person is construed to practice or offer to practice soil classifying within the meaning and intent of this chapter if the person, by verbal claim, sign, advertisement, letterhead, card or use of some other title, represents himself to be a soil classifier; however, this does not mean or include the practice of soil classifying by persons exempt under the provisions of Section 40‑65‑40 or the work ordinarily performed by persons who sample and test soil for fertility status or construction materials and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. Notwithstanding the provisions of this paragraph, a person must not be construed to practice soil classifying unless he offers soil classifying services to or performs soil classifying for the public.

(4) ‘Responsible charge’ means direct control and personal supervision of soil classification.

(5) ‘Soil’ means all of the groups of natural bodies occupying the unconsolidated portion of the earth’s surface capable of supporting plant life and having properties due to the combined effect of climate and living organisms, as modified by topography and time, upon parent materials.

(6) ‘Soil classification’ means plotting the boundaries and describing and evaluating the kinds of soil as to their behavior and response to management under various uses.

(7) ‘Soil classifier’ and ‘professional soil classifier’ means a person who, by reason of his special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soil education and soil classification experience in the formation, morphology, description, and mapping of soils, is qualified to practice soil classifying, who has been licensed by the Department of Labor, Licensing and Regulation, and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

(8) ‘Soil‑classifier‑in‑training’ means a person who complies with the requirements for education and character and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

Section 40‑65‑30. (A) A person must not practice or offer to practice professional soil classifying in this State unless the person is licensed to practice under the provisions of this chapter.

(B) To be eligible for licensure as a professional soil classifier or to be certified as a soil‑classifier‑in‑training, an applicant must be of good character and reputation and shall submit a written application to the department containing information the department may require.

(C) To be licensed as a professional soil classifier an applicant must have:

(1) fifteen or more semester hours of approved soil courses as recognized by the department;

(2) successfully passed an examination in the principles and practice of soil classifying as prescribed by the department;

(3) completed two or more years of training under the supervision of a registered or licensed soil classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier; and

(4) one of the following additional qualifications:

(a) a bachelor’s degree or equivalent in a curriculum approved by the department and two years or more of experience of a grade and character which indicates to the department that the applicant is competent to practice soil classifying;

(b) a bachelor’s degree or equivalent in one of the natural sciences and six years or more of experience in soil classifying work of a character and grade which indicates to the department that the applicant is competent to practice soil classifying;

(c) a soil‑classifier‑in‑training certificate with two years’ or more experience as a soil‑classifier‑in‑training of a grade and character which indicates to the department that the applicant is competent to practice soil classifying; or

(d) employment as an extension specialist, researcher, or teacher of soils in a college or university and has two or more years of soil classifying experience of a character and grade which indicates to the department that the applicant is competent to practice soil classifying.

(D) To be certified as a soil‑classifier‑in‑training, which certification is valid for two years, an applicant must have:

(1) a bachelor’s degree or equivalent in a curriculum approved by the department and have passed an examination in the fundamentals of soil classification; or

(2) completed a curriculum not approved by the department, have passed an examination in the fundamentals of soil classification, and have four years of soil classification experience, of which two years must be under the supervision of a registered or licensed soil classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier.

Section 40‑65‑32. Applications for licensure as a professional soil classifier and for certification as a soil‑classifier‑in‑training must be on forms prescribed and furnished by the department.

Section 40‑65‑34. Examinations must be held at such times and places as the department determines.

Section 40‑65‑36. (A)(1) The department shall issue a license upon payment of the license fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(2) The issuance of a license by the department is prima facie evidence that the person named is entitled to all rights and privileges of a professional soil classifier during the term for which the license is valid if the license has not been revoked or suspended.

(B) The department shall issue a certificate as a soil‑classifier‑in‑training upon payment of the certificate fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(C)(1) The application for a license as a professional soil classifier or for certification as a soil‑classifier‑in‑training shall be on a form prescribed and furnished by the department, shall contain statements made under oath showing the applicant’s education, a detailed summary of his experience, and references as required by this chapter, and shall be accompanied by an application fee established by the department of not less than five nor more than twenty‑five dollars.

(2) Licenses shall be established by the department subject to the following limitations:

(a) The license fee for professional soil classifiers shall be in an amount not less than twenty nor more than one hundred dollars.

(b) The certification fee for soil‑classifier‑in‑training certification or enrollment shall be established by the department in an amount not less than ten nor more than fifty dollars.

(c) Should the department deny the issuance of a license to an applicant, the fee paid shall be retained as an application fee.

(3) Examinations shall be held at such times and places as the department shall determine. Examinations required on fundamental soil subjects may be taken at any time prescribed by the department. The final examinations may not be taken until the applicant has completed a period of soil classifying experience as provided in this chapter. The passing grade on any examination shall not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the department of not less than ten nor more than twenty‑five dollars. Any candidate for registration having an average grade of less than fifty percent may not apply for reexamination for a period of one year from the date of such examination.

(D) An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

Section 40‑65‑38. (A) A licensee shall file an application for renewal every two years on or before a date designated by the department. The application for renewal must include:

(1) current contact information;

(2) renewal fee;

(3) acceptable continuing education promulgated by the department in regulation, upon consultation with the advisory council; and

(4) other information the department may request.

(B) A licensee who allows a license to lapse by failing to renew, as provided for in subsection (A), may reinstate the license within three years from the date the license lapsed by filing a reinstatement application and paying the required fees. After three years from the date the licensed lapsed, the person must apply for a new license, meeting all requirements for licensure in effect at the time of applying.

Section 40‑65‑40. This chapter must not be construed to prevent or affect:

(1) the work of an employee or subordinate of a person licensed pursuant to this chapter or an employee of a person practicing lawfully pursuant to this chapter, if the work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person licensed pursuant to this chapter or a person practicing lawfully pursuant to this chapter;

(2) the practice of any other legally recognized profession or trade;

(3) the practice of soil classifying by a person who is regularly employed to perform soil classifying services solely for his employer or for a subsidiary or affiliated corporation of his employer, if the soil classifying is performed on the real property of his employer.

Section 40‑65‑45. An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

Section 40‑65‑50. The department shall administer the program of soil classifiers in accordance with Section 40‑1‑50, this chapter, and regulations promulgated pursuant to this chapter.

Section 40‑65‑60. In addition to the powers provided for in Chapter 1, the department may promulgate regulations pursuant to the Administrative Procedures Act including, but not limited to, a code of ethics for licensees.

Section 40‑65‑70. In addition to the powers provided for in Chapter 1, the department may apply in the name of the State for relief by injunction to enforce the provisions of this chapter or to restrain any violation of this chapter. In these proceedings it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The director, employees, or agents of the department may not be held personally liable for bringing an action pursuant to this section.

Section 40‑65‑80. Investigations must be conducted in accordance with Section 40‑1‑80. Any person may file a complaint, which must be in writing, alleging fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against a licensee or a person holding a certification.

Section 40‑65‑100. Cease and desist orders and equitable relief may be obtained in accordance with Section 40‑1‑100.

Section 40‑65‑110. In addition to the grounds provided in Section 40‑1‑110, the advisory council may cancel, fine, suspend, revoke, or restrict the license or certification to practice soil classifying of a person who is guilty of:

(1) the practice of fraud or deceit in obtaining a license or certification;

(2) any gross negligence, incompetence, or misconduct in the practice of soil classifying;

(3) any felony or crime involving moral turpitude or violation of the code of ethics promulgated by the department in regulation.

Section 40‑65‑120. A person aggrieved by a decision of the advisory council may file an appeal in accordance with the Administrative Procedures Act.

Section 40‑65‑130. As provided in Section 40‑1‑130, the department may deny licensure or certification to an applicant based on the same grounds for which the advisory council may take disciplinary action against a licensee or a holder of certification.

Section 40‑65‑140. A license or certification may be denied based on a person’s prior criminal record only as provided in Section 40‑1‑140.

Section 40‑65‑150. A licensee or a person holding a certification under investigation for a violation of this chapter or a regulation promulgated pursuant to this chapter may voluntarily surrender the license or certification in accordance with and subject to the provisions of Section 40‑1‑150.

Section 40‑65‑170. A person found in violation of this chapter or regulations promulgated pursuant to this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

Section 40‑65‑180. All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180. No person against whom a cost or fine is levied is eligible for the issuance or reinstatement of a license or certification until the cost or fine has been paid in full.

Section 40‑65‑190. Investigations conducted pursuant to this chapter are confidential and all communications are privileged as provided in Section 40‑1‑190.

Section 40‑65‑200. A person who practices or offers to practice professional soil classifying in this State without being licensed in accordance with the provisions of this chapter or a person, firm, partnership, organization, association, corporation, or other entity using or employing the words ‘soil classifier’ or ‘professional soil classifier’, or any modification or derivative of these terms, in its name or form of business or activity, except as authorized in this chapter, or any person presenting or attempting to use the license of another, or any person who shall give any false or forged evidence of any kind to the department in obtaining or attempting to obtain a license or any person who shall falsely impersonate a licensee of like or different name, or any person who attempts to use an expired or revoked or nonexistent license, or who practices or offers to practice when not qualified, or any person who falsely claims that he is licensed under this chapter, or any person, partnership, corporation, or other entity who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three months. Each violation constitutes a separate offense. It is the duty of all constituted officers of the State and all political subdivisions of the State to enforce the provisions of this chapter and to prosecute any person violating this chapter.

Section 40‑65‑210. The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter, a regulation promulgated under this chapter, or an order of the advisory council. For each violation an administrative law judge may impose a fine of no more than ten thousand dollars.

Section 40‑65‑220. If a provision of this chapter or the application of a provision of this chapter to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

**Grandfather clause**

B. Notwithstanding another provision of law, a person who holds a certificate of registration as a soil classifier issued by this State on July 10, 2010, has all the duties, responsibilities, and rights provided to licensees pursuant to Chapter 65, Title 40 of the 1976 Code, as amended by SECTION 2 of this act, and upon the first renewal of this person’s certificate after June 30, 2010, the Department of Labor, Licensing and Regulation shall issue the person a license without meeting the requirements set forth in this act.

**Severability clause**

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Department of Labor, Licensing and Regulation to provide information on professions and occupations**

SECTION 4. The Department of Labor, Licensing and Regulation shall provide to the General Assembly, by July 15, 2010, the following information as to each profession and occupation regulated under Title 40 of the 1976 Code:

(1) A list of the total amount of penalties and fees collected from each profession or occupation in the most recent annual or biannual licensure period for that profession or occupation.

(2) A list of the total cost incurred in administering and regulating each occupation or profession in the most recent annual or biannual licensure period for that profession or occupation.

(3) A list of all occupations and professions for which, in the most recent annual or biannual licensure period, costs incurred in administering and regulating the occupation or profession exceeded the penalty and fee income generated from the profession or occupation.

**Time effective**

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

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