~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT AMENDED AND ADOPTED

April 28, 2010

**S. 1148**

Introduced by Senator Cleary

S. Printed 4/28/10--S.

Read the first time February 9, 2010.

**A** **BILL**

TO AMEND CHAPTER 65, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LICENSURE AND REGULATION OF PROFESSIONAL SOIL CLASSIFIERS, SO AS TO CONFORM THIS CHAPTER TO THE ORGANIZATIONAL STATUTORY FRAMEWORK ESTABLISHED FOR PROFESSIONS AND OCCUPATIONS UNDER THE ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; 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 THE PERSON’S REGISTRATION; AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PROFESSIONAL SOIL CLASSIFIERS.

Amend Title To Conform

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

SECTION 1. Chapter 65, Title 40 of the 1976 Code is amended to read:

“CHAPTER 65

Soil Classifiers

~~Section 40‑65‑10. Definitions.~~  ~~Unless the context or subject matter otherwise requires:~~

~~(a) ‘Soil classifier’ shall mean a professional soil classifier as defined in subsection (b) of this section.~~

~~(b) ‘Professional soil classifier’ shall mean 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 soils education and soil classification experience in the formation, morphology, description and mapping of soils is qualified to practice soil classifying and who has been duly registered by the State Board of Registration for professional soil classifiers.~~

~~(c) ‘Soil‑classifier‑in‑training’ shall mean 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 Sections 40‑65‑100, 40‑65‑110, 40‑65‑120 and 40‑65‑130.~~

~~(d) ‘Soil’ is 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.~~

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

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

~~(g) ‘Practice of soil classifying and practice of professional soil classifying’ shall mean 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, the soil classification by accepted principles and methods, investigation, evaluation and consultation on the effect of measured, observed and inferred soil properties upon the 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 the various uses, and the effect of the various uses upon kinds of soil, any of which embraces such service or work either public or private incidental to the practice of soil classifying.~~

~~A person shall be construed to practice or offer to practice soil classifying within the meaning and intent of this chapter who by verbal claim, sign, advertisement, letterhead, card or use of some other title represent himself to be a soil classifier, but shall not mean or include the practice of soil classifying by persons exempt under the provisions of Section 40‑65‑240 nor 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 foregoing provisions, a person shall not be construed to practice soil classifying unless he offers soil classifying services to or performs such soil classifying for the public.~~

~~(h) ‘Department’ shall mean the Department of Natural Resources.~~

~~(i) ‘Responsible charge’ shall mean direct control and personal supervision of soil classification.~~

~~Section 40‑65‑20.~~  ~~The department shall serve as the agency of registration for professional soil classifiers and added to its duties shall be the administration of the provisions of this chapter. The department shall appoint an advisory council of five qualified professional soil classifiers who shall have the qualifications required in Section 40‑65‑30 to recommend certification of those eligible to become registered soil classifiers. One of these five persons shall be the chief soil scientist of the department. The other four members of the advisory council shall be appointed for five years and until their successors have been appointed and qualify, provided that the initial terms shall be made so that the term of one member shall expire on June thirtieth of each year.~~

~~Section 40‑65‑30.~~  ~~Each member of the advisory council shall be a professional soil classifier who has been actively engaged in the practice of professional soil classifying for a period of at least ten years and who shall have been in responsible charge of soil classification for at least six years.~~

~~Section 40‑65‑40.~~  ~~Each member of the advisory council may receive twenty‑five dollars for each day actually engaged in the services of the department and shall be reimbursed for all actual travelling, incidental and clerical expenses necessarily incurred in carrying out the provisions of this chapter. These expenses shall be paid from general appropriations of the department.~~

~~Section 40‑65‑50.~~  ~~Vacancies in the membership of the advisory council shall be filled for the unexpired term by appointment by the department as provided in Section 40‑65‑20.~~

~~Section 40‑65‑60.~~  ~~The advisory council shall hold at least two regular meetings each year. Special meetings may be held as the bylaws of the council provide. The council shall elect annually a chairman and a vice‑chairman. The chief soil scientist, SCLRCC, shall serve as secretary‑treasurer of the council. A quorum of the council shall consist of three members.~~

~~Section 40‑65‑70.~~ ~~The department shall have the following powers:~~

~~(a) To adopt and amend all bylaws, rules of procedure and regulations to administer and carry out the provisions of this chapter and for the conduct of its affairs and functions consistent with the Constitution and laws of this State or this chapter which may be reasonably necessary for the performance of its duties and the regulation of its proceedings, meetings, records, examinations and the conduct thereof, and to adopt and promulgate a code of ethics which shall be binding upon all persons registered under or subject to this chapter.~~

~~(b) To affix its official seal to each numbered certificate issued.~~

~~(c) To hold hearings, administer oaths, take and record testimony and under the hand of its chairman and the seal of the department subpoena witnesses and compel their attendance and to require the submission of books, papers, documents or other pertinent data in any disciplinary matters or in any case wherever a violation of this chapter or of the rules or regulations promulgated by the department is alleged, and to make findings, orders and determinations which shall have the force and effect of law which shall be subject to review by the courts of this State in the manner provided by law from decisions of other boards and commissions. Upon failure or refusal of any person to comply with any such order of the department, or to honor its subpoena, the department may apply to an administrative law judge of any jurisdiction to enforce compliance with same.~~

~~(d) To apply in the name of the state for relief by injunction without bond, to enforce the provisions of this chapter or to restrain any violation thereof. In such proceedings it shall not be 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 thereof. The members of the department shall not be personally liable under this proceeding.~~

~~Section 40‑65‑80.~~  ~~All funds derived under the provisions of this chapter shall be remitted to the State Treasurer as collected. Such funds may be expended as directed by the department upon warrant requisitions directed to the Comptroller General who shall, after being satisfied of the propriety of payment, issue his warrant on the State Treasurer.~~

~~Section 40‑65‑90.~~  ~~The department shall keep a record of its proceedings and of all applications for registration which record shall show the name, age and last known address of each applicant, the place of business of such applicant, his education, experience and other qualifications, type of examination required, whether or not a certificate of registration was granted, whether or not the applicant was rejected, the date of the action of the department, and such other information as may be deemed necessary by the department which record of the department shall be prima facie evidence of the proceeding of the department and a transcript thereof duly certified by the secretary under seal shall be admissible as evidence with the same force and effect as if the original were produced.~~

~~Section 40‑65‑100.~~ ~~To be eligible for registration as a professional soil classifier or certification 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 such information as the department may require, together with five references, three of which shall be professional soil classifiers having personal knowledge of his soil classifying experience; or in the case of an application for certification as a soil‑classifier‑in‑training, by three character references.~~

~~Section 40‑65‑110.~~ ~~An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination within one year after July 1, 1974 if he is:~~

~~(a) A person of good character who has been a resident of this State for at least one year immediately preceding the date of his application and was a practicing soil classifier on July 1, 1974, and meets the requirements of this chapter and has performed work of a character satisfactory to the department; or,~~

~~(b) A person holding a certificate of registration in the practice of soil classifying on the basis of comparable qualifications 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 40‑65‑120.~~  ~~An applicant otherwise qualified must be admitted to registration as a professional soil classifier if he has fifteen or more semester hours of approved soil courses as recognized by the department, has successfully passed an examination in the principles and practice of soil classifying as prescribed by the department, has completed two or more years of training under the supervision of a registered soil classifier or someone who meets the minimum academic and experience requirements of a registered soil classifier, and has one of the following additional qualifications:~~

~~(a) is a person who has earned a bachelor’s degree or equivalent in a curriculum approved by the department and with a specific record of 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; or~~

~~(b) is a person who has earned a bachelor’s degree or equivalent in one of the natural sciences and has 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; or~~

~~(c) is a person who holds a valid soil‑classifier‑in‑training certificate with a specific record of 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) is a person who is 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.~~

~~Section 40‑65‑130.~~  ~~Unless otherwise qualified, a person must be admitted to certification as a soil‑classifier‑in‑training, which certification is valid for two years, if he is a person who is:~~

~~(a) a person who has earned a bachelor’s degree or equivalent in a curriculum approved by the department and has passed an examination in the fundamentals of soil classification; or~~

~~(b) an applicant who has completed a curriculum not approved by the department and who has a specific record of four years of soil classification experience of which two years must be under the supervision of a registered soil classifier or someone who meets the minimum academic and experience requirements of a registered soil classifier and who passes an examination in the fundamentals of soil classification.~~

~~Section 40‑65‑140.~~ ~~Application for registration as a professional soil classifier and 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.~~

~~Section 40‑65‑150.~~ ~~Registration shall be established by the department subject to the following limitations:~~

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

~~(b) The registration 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 certificate to an applicant, the fee paid shall be retained as an application fee.~~

~~Section 40‑65‑160.~~  ~~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.~~

~~Section 40‑65‑170.~~  ~~The department shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to an applicant who in the opinion of the department has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as soil‑classifiers‑in‑training. Certificates of registration must carry the designation ‘professional soil classifier’, show the full name of the registrant without any titles, be numbered, and be signed by the executive director of the department. The issuance of a certificate of registration 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 certificate is valid if it has not been revoked or suspended.~~

~~Section 40‑65‑180.~~ ~~Certificates of registration shall expire on the last day of the month of December following their issuance and shall become invalid after that date unless renewed. It shall be the duty of the secretary of the department to notify every person registered under this chapter of the date of the expiration of the certificate of registration and the amount of the fee required for its renewal. Such notice shall be mailed to the registrant at his last‑known address at least one month in advance of the expiration of such certificate. Renewal may be effected at any time prior to or during the month of December by the payment of a fee established by the department not to exceed the fees established for registration. Renewal of an expired certificate may be effected under rules promulgated by the department regarding requirements for reexamination and penalty fees.~~

~~Section 40‑65‑190.~~  ~~A new certificate of registration to replace any certificate lost, destroyed or mutilated may be issued subject to the rules of the department. A reasonable charge shall be made for such issuance.~~

~~Section 40‑65‑200.~~  ~~The department shall cause to have prepared and shall adopt a code of ethics a copy of which shall be delivered to every registrant and applicant for registration under this chapter. Such delivery shall constitute due notice to all registrants. The department may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of such revisions and amendments. Such code of ethics when adopted shall apply to all certificate holders.~~

~~Section 40‑65‑210.~~  ~~The department shall have the power to suspend, refuse to renew or revoke the certificate of registration of, or reprimand any registrant who is guilty of: the practice of fraud or deceit in obtaining a certificate of registration, any gross negligence, incompetence or misconduct in the practice of soil classifying, any felony or crime involving moral turpitude or violation of the code of ethics adopted and promulgated by the department.~~

~~Section 40‑65‑220.~~  ~~Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of the code of ethics against any individual registrant. Such charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary of the department. All charges unless dismissed by the department as unfounded or trivial shall be heard by the department within three months after the date on which they shall have been preferred. The time and place for such hearing shall be fixed by the department and a copy of the charges, together with a notice of the time and place of hearing, shall be served upon the accused either personally or sent by registered or certified mail to the last‑known address of such individual registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant shall have the right to appear in person or by counsel, or both, to cross‑examine witnesses appearing against the accused, and to produce evidence and witnesses in defense of the accused. If the accused person fails or refuses to appear, the department may proceed to hear and determine the validity of the charges. If after such hearing a majority of the department votes in favor of sustaining the charges, the department shall make findings of fact, draw its conclusions and issue its order therein and serve the same upon the accused. In such order the department may reprimand, suspend, refuse to renew, or revoke the accused individual’s certificate of registration. Any person who feels aggrieved by any action of the department in denying, suspending, refusing to renew, or revoking his certificate of registration may appeal therefrom an administrative law judge to within thirty days after receipt of the order of the department. The hearing by the court shall be de novo.~~

~~Section 40‑65‑230.~~  ~~No resident or nonresident shall practice or offer to practice professional soil classifying as defined by this chapter unless such person is duly registered to practice under the provisions of this chapter.~~

~~Section 40‑65‑240.~~  ~~This chapter shall not be construed to prevent or affect:~~

~~(a) The work of an employee or subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under subsection (a) of this section, provided such work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person holding a certificate of registration under this chapter or a person practicing lawfully under subsection (a) of this section.~~

~~(b) The practice of any other legally recognized profession or trade.~~

~~(c) 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, providing the soil classifying is performed on the real property of his employer.~~

~~Section 40‑65‑260.~~  ~~Any person who shall practice or offer to practice professional soil classifying in this State without being registered in accordance with the provisions of this chapter, or any 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 thereof in its name or form of business or activity except as authorized in this chapter, or any person presenting or attempting to use the certificate of registration of another, or any person who shall give any false or forged evidence of any kind to the department or to any member thereof in obtaining or attempting to obtain a certificate of registration or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of registration, or who shall practice or offer to practice when not qualified, or any person who falsely claims that he is registered under this chapter, or any person, partnership, corporation or other entity who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or be imprisoned for not more than three months. Each violation shall constitute a separate offense. It shall be the duty of all duly constituted officers of the state and all political subdivisions thereof to enforce the provisions of this chapter and to prosecute any persons violating same.~~

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 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 40‑65‑50. 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.”

SECTION 3. Notwithstanding any other 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 of Title 44 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.

SECTION 4. This act takes effect July 1, 2010.

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