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AMENDED

June 1, 2010

**S. 1148**

Introduced by Senator Cleary

S. Printed 6/1/10--H.

Read the first time May 4, 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 28, Title 40 of the 1976 Code is amended to read:

“CHAPTER 28

Landscape Architects

~~Section 40‑28‑10.~~ ~~Unless the context or subject matter otherwise requires:~~

~~(a)~~ ~~“Landscape architect” means a person who is licensed to practice landscape architecture in this State.~~

~~(b)~~ ~~“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 land surveying as these terms are defined in Section 40‑28‑150 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.~~

~~(c)~~ ~~“Department” shall mean the Department of Natural Resources.~~

~~(d)~~ ~~“Council” shall mean a body of five qualified professional landscape architects appointed by the department to serve as advisors to the department, as provided for in Sections 40‑28‑30 through 40‑28‑70.~~

~~(e)~~ ~~“Responsible charge” shall mean direct control and personal supervision of landscape architecture.~~

~~Section 40‑28‑20.~~ ~~In order to safeguard public welfare, health and property and to promote public good, any person practicing or offering to practice landscape architecture, privately or in public service, shall be required to submit evidence that he is qualified to practice and shall become registered as hereinafter provided. It shall be unlawful for any person to practice landscape architecture or to use the term or title “Landscape Architect” unless duly licensed under the provisions of this chapter.~~

~~Section 40‑28‑30.~~ ~~The department shall serve as the board of registration for landscape architects and shall administer the provisions of this chapter. The department shall appoint a council of five qualified professional landscape architects who shall have the qualifications required in the following section to recommend certification of those eligible to become registered landscape architects. The five members of the 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 40‑28‑40.~~ ~~Each member of the council must be a registered 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 in responsible charge of landscape architecture for at least three years.~~

~~Section 40‑28‑50.~~ ~~Each member of the council may receive an amount as provided for in the annual General Appropriations Act for each day actually and reasonably engaged in the services of the department and must be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter. These expenses must be paid from general appropriations to the department.~~

~~Section 40‑28‑60.~~ ~~Vacancies in the membership of the council shall be filled for the unexpired portion of the term in the manner of the original appointments.~~

~~Section 40‑28‑70.~~ ~~The 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, a vice chairman and a secretary. A quorum of the council shall consist of three members.~~

~~Section 40‑28‑80.~~ ~~The department shall have the following powers:~~

~~(a)~~ ~~To adopt and amend 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 or license issued.~~

~~(c)~~ ~~To apply in the name of the state for relief by injunction 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 40‑28‑90.~~ ~~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 40‑28‑100.~~ ~~The department shall keep a record of its proceedings and of all applications for registration, which records shall show the name, age, and last known address of each applicant, the place of business of applicant, education, experience, and other qualifications, type of examination required, whether or not a license was granted, whether or not the applicant was denied a license, the date of the action of the department, and other information considered necessary by the department. The record of the department is evidence of the proceedings of the department and a transcript duly certified by the secretary under seal is admissible as evidence with the same force and effect as the original.~~

~~Section 40‑28‑110.~~ ~~To be eligible for registration and licensing as a professional landscape architect in South Carolina an applicant shall 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 registered under this chapter or other qualified person, or experience approved by the department, and satisfactorily pass a written examination as prescribed by the department; or~~

~~(2)~~ ~~be a high school graduate or have an equivalent education as determined by the department and, in addition, at least eight years of varied landscape architectural experience under the supervision of a landscape architect registered under this chapter or other qualified person or experience approved by the department, and satisfactorily pass a written examination as prescribed by the department;~~

~~A maximum of three years of the experience requirement contained in subsection (2) of this section may be satisfied by proof of education or nonaccredited degree, as considered appropriate by the department; or~~

~~(3)~~ ~~hold a license or certification to practice landscape architecture issued to him 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 or registered 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 registration, and an individual holding such a certification may be accepted at the discretion of the department.~~

~~Section 40‑28‑120.~~ ~~Examinations must be offered at least annually, the time and place to be established by the department.~~

~~At the discretion of the department, the written examination may be administered to candidates who are eligible for registration under Section 40‑28‑110. The department may admit to the examination a person who may complete the experience requirements within ninety days after the examination.~~

~~Administration and evaluation of the examination must be conducted in a manner prescribed by the department.~~

~~Candidates shall retain credit for any parts of the examination passed and may be permitted to retake a failed part of the examination.~~

~~Upon proper application, the department, at its discretion, may credit to a candidate a prescribed part of the examination successfully passed and properly attested to by another state, territory, or possession of the United States or the District of Columbia. The candidate then may take the remaining examination parts and, if successfully completed, may be registered and licensed by the department. The department shall accept the transfer of grades only from the state of original application.~~

~~Section 40‑28‑130.~~ ~~The department, subject to the provisions of this chapter and the rules and regulations of the department promulgated thereunder prescribing the qualifications for a landscape architect license, may permit the practice of landscape architecture in this State under a landscape architect license issued under the laws of any other state, upon payment of the current fee established by the department, and upon submission of evidence satisfactory to the department:~~

~~(1)~~ ~~That the other state maintains a system and standard of qualifications and examinations for a landscape architect license which were substantially equivalent to those required in this State at the time the license was issued by the other state;~~

~~(2)~~ ~~That the other state gives similar recognition and endorsement to landscape architect licenses of this State.~~

~~Section 40‑28‑140.~~ ~~Each landscape architect, upon registration, shall obtain a seal of the design authorized by the department, bearing the name of the registrant, number of certificate or license, and the legend “South Carolina Registered Landscape Architect”. The seal may be used only while the registrant’s certificate or license is in full force and effect. Certificates of registration, licenses, and identification cards must be signed by the chairman of the department and the secretary of the council. 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 land surveyor.~~

~~Section 40‑28‑150.~~ ~~This chapter shall not be construed to require licensing in the following cases:~~

~~(a)~~ ~~the practice of landscape architecture by any person who acts under the supervision of a registered 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;~~

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

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

~~(d)~~ ~~the practice of surveying by a duly registered professional land surveyor and the performing of landscape architectural work by a registered professional land surveyor or by an employee under supervision of a registered professional land surveyor, when such work is incidental to their practice;~~

~~(e)~~ ~~the practice of landscape architecture by employees 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;~~

~~(f)~~ ~~the practice of planning as customarily done by regional or urban planners;~~

~~(g)~~ ~~the practice of arborists, foresters, gardeners, home builders or horticulturists;~~

~~(h)~~ ~~the practice of any nurseryman, general or landscape contractor, such practice to include design, planning, location and arrangements of plantings or other ornamental features.~~

~~Section 40‑28‑160.~~ ~~The right to engage in the practice of landscape architecture is a personal right, based upon the qualifications of the individual evidenced by his license.~~

~~(1)~~ ~~The license is not transferable. All final drawings, specifications, plans, reports or other papers or documents involving the practice of landscape architecture, as defined in Section 40‑28‑10, when issued, or filed for public record, must be dated, and bear the name and seal of the landscape architect or landscape architects who prepared or approved them.~~

~~(2)~~ ~~Partnerships and corporations which meet the following conditions may be formed as a vehicle for the practice of landscape architecture:~~

~~(a)~~ ~~The practice of or offer to practice landscape architecture for others as defined in Section 40‑28‑10 by individual landscape architects licensed under this chapter through a corporation as officer, employees, or agents, or through a partnership as partners, officers, employees, or agents, or the offering or rendering of landscape architecture services by corporation or partnership through individual landscape architects licensed under this chapter is permitted, subject to the provisions of this chapter if (i) one or more of the corporate officers in the case of a corporation, or one or more of the partners in the case of a partnership, are designated as being responsible for the professional services described in Section 40‑28‑10 of the corporation or partnership and are landscape architects under this chapter; and (ii) all personnel of the corporation or partnership, who act in its behalf as landscape architects, are licensed under this chapter; and (iii) the corporation or partnership has been issued a certificate of authorization by the department. The requirements of this chapter do not prevent a corporation and its employees from performing landscape architectural services for the corporation or subsidiary or affiliated corporations.~~

~~(b)~~ ~~A corporation or partnership issued a Certificate of Authorization to provide or offer to provide landscape architectural services to the public in this State shall:~~

~~(1)~~ ~~submit an initial fee and file with the department, on a form prescribed by the department, a listing of names and addresses of all principals and officers, as well as all principals, officers, agents, and employees, who are in responsible charge of the practice in this State and are licensed to practice landscape architecture in this State;~~

~~(2)~~ ~~insure that all documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership bear the signature and seal of a landscape architect registered and licensed in this State;~~

~~(3)~~ ~~advise the department in writing within thirty days of a change in status of a principal, officer, agent, or employee registered and licensed under this chapter;~~

~~(4)~~ ~~have a resident landscape architect duly registered to practice in this State in responsible charge of a place of business maintained in this State for the purpose of providing or offering to provide landscape architectural services to the public;~~

~~(5)~~ ~~file a form giving current information, as prescribed in (1) above, with the annual renewal fee to be determined by the department.~~

~~(c)~~ ~~No corporation or partnership is relieved of responsibility for conduct or acts of its agents, employees, or officers by reason of its compliance with the provisions of this section nor is an individual practicing landscape architecture as defined in Section 40‑28‑10 relieved of responsibility of landscape architectural services performed by reason of his employment or relationship with the corporation or partnership.~~

~~(d)~~ ~~Disciplinary action against a corporation or partnership must be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.~~

~~Section 40‑28‑170.~~ ~~A person who, without possessing a valid, unrevoked certificate or license as required by this chapter, uses the title or term “Landscape Architect” in a sign, card, listing, advertisement, or in any other manner states that he is a landscape architect, as defined in this chapter, is guilty of a misdemeanor and, upon conviction, fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not exceeding six months or both.~~

~~Section 40‑28‑180.~~ ~~Each of the following facts constitutes a ground for disciplinary action against a holder of a license or certificate:~~

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

~~(2)~~ ~~he has obtained the certificate or license by fraud or misrepresentation;~~

~~(3)~~ ~~he is impersonating a landscape architect or a former landscape architect of the same or similar name, or is practicing under an assumed, fictitious, or corporate name;~~

~~(4)~~ ~~he has aided or abetted, in the practice of landscape architecture, a person not authorized to practice landscape architecture under the provisions of this chapter;~~

~~(5)~~ ~~in the practice of landscape architecture, he has been guilty of fraud or deceit, negligence, wilful misconduct, or gross incompetence;~~

~~(6)~~ ~~he has affixed his seal to plans, drawings, specifications, or other instruments of service which have 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 40‑28‑190.~~ ~~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 40‑28‑200.~~ ~~(A)~~ ~~Every landscape architect shall pay an annual license fee to the department. The fee is due and payable on the first day of January of each year and becomes delinquent after the thirty‑first day of January.~~

~~(B)~~ ~~If the annual license fee is not paid before it becomes delinquent, a penalty of twenty dollars must be added to the amount of the fee.~~

~~(C)~~ ~~If the annual certificate or license fee and penalty are not paid within ninety days of the expiration date, the landscape architect’s certificate or license must be suspended after the expiration of thirty days from the date of mailing of notice of the delinquency by registered or certified mail, return receipt requested, postage prepaid and addressed to the landscape architect at his address as it appears in the records of the department. The notice of delinquency must state that upon the expiration of time allowed his certificate or license must be suspended unless, within time allowed, the annual certificate or license fee and penalty are remitted.~~

~~(D)~~ ~~After the certificate or license has been suspended, it may be reinstated upon the payment of the annual renewal fee for each delinquent year, plus the penalty for each year, and such proof of the landscape architect’s qualification as required by the department. A landscape architect whose license has been suspended and who was registered by methods other than prescribed in Sections 40‑28‑110 and 40‑28‑130, is required to pass a written examination prescribed by the department.~~

~~(E)~~ ~~The department shall issue a receipt to each landscape architect promptly upon payment of the annual certificate or license fee.~~

~~Section 40‑28‑210.~~ ~~The Attorney General shall act as legal advisor to the department and render such legal assistance as may be necessary in carrying out the provisions of this chapter.~~

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’ shall mean the Board of Landscape Architectural Examiners.

(2) ‘Department’ shall mean 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 40‑28‑40 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 an 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 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 Title 40, Chapter 1, 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, willful 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.”

SECTION 2.A. 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 40‑65‑45. 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.”

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 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 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.

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.

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

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