

MAINE STATE LEGISLATURE

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New Draft of H. P. 1993, L. D. 2182
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2322

H. P. 2240

House of Representatives, March 24, 1976

Reported by Mrs. Clark from Committee on Business Legislation and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to the Geologists and Soil Scientists Certification Act.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 2301, sub-§ 1, as last amended by PL 1975, c. 547, §§ 1-3 is further amended by adding at the end the following:

State Board of Certification for Geologists and Soil Scientists.

Sec. 2. 5 MRSA § 2301, sub-§ 1, ¶ L is enacted to read:

L. Persons licensed under Title 22, section 42, subsection 3.

Sec. 3. 22 MRSA § 42, sub-§ 3, as repealed and replaced by PL 1973, c. 521, § 1, is amended to read:

3. **Plumbing and subsurface sewage disposal.** The department shall adopt rules and regulations relating to plumbing and **subsurface sewage disposal systems and the installation** and inspection thereof consistent with Title 30, sections 3221 to 3225 and Title 32, sections 3301 to 3507; and shall hold hearings on the first Tuesday of February and August of each year for the purpose of considering changes in the rules and regulations pertaining to plumbing and **subsurface sewage disposal systems and the installation and inspection thereof.** The department shall prior to adopting or amending rules and regulations invite participation and receive written comments from other interested state agencies including: The Department of Environmental Protection; the Land Use Regulation Commission; the State Housing Authority; the Soil and Water Conservation Commission and the Plumbing Examining Board.

Any person who violates the rules and regulations adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30,

section 3221 shall be punished by a fine of not less than \$100 nor more than \$500 for each offense. The department or a municipality may seek to enjoin violations of ~~said~~ the rules and regulations or municipal ordinances.

Sec. 4. 22 MRSA § 42, sub-§ 3-A is enacted to read:

3-A. Licensing of persons to evaluate subsurface sewage disposal systems. The department shall adopt rules and regulations providing for qualification, licensing and relicensing of persons to evaluate soils for subsurface sewage disposal. The hearings provided for in subsection 3 shall include consideration of the adoption or change of such rules and regulations.

The department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violation of the rules and regulations adopted pursuant to this section or subsection 3 by any person licensed under this subsection. The department shall have the authority, after notice and hearing, to refuse to issue or renew or to suspend a license until the department's complaint regarding such licensed person can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the license of any person who is found guilty of noncompliance with or violation of the rules and regulations adopted pursuant to this subsection or subsection 3.

Sec. 5. 32 MRSA § 1255, sub-§ 6 is enacted to read:

6. Subsurface sewage disposal. Persons who have been licensed by the Department of Human Services pursuant to Title 22, section 42, subsection 3-A, solely for the purpose of work relating to subsurface sewage disposal systems. This exemption shall not apply to the board's power to register, revoke, suspend or refuse to renew the registration of any registrant.

Sec. 6. 32 MRSA § 4906, sub-§ 4, as enacted by PL 1973, c. 558, § 1, is amended to read:

4. State of Maine and United States Government employees. Officers and employees of the State of Maine and the Government of the United States while engaged within this State in the practice of the profession of geologist or soil scientist for ~~said~~ the government; and

Sec. 7. 32 MRSA § 4906, sub-§ 5 is enacted to read:

5. Subsurface sewage disposal. Persons who have been licensed by the Department of Human Services pursuant to Title 22, section 42, subsection 3, solely for the purpose of work relating to subsurface sewage disposal systems. This exemption shall not apply to the board's power to certify, revoke, suspend or refuse to renew the certificate of any registrant.

Sec. 8. 32 MRSA § 4907, first ¶, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

The State Board of Certification for Geologists and Soil Scientists is created and shall administer this chapter and its office shall be within the Department of Conservation. The board shall consist of 7 members, 6 of whom shall be

appointed by the Governor, 3 of whom shall be geologists of the following professional categories; one academic geologists; one State Government geologist, one independent consultant geologist or salaried company geologist; one independent consultant or salaried soil scientist; one other soil scientist and a representative of the public. The 7th member shall be the State Soil Scientist with the Maine Soil and Water Conservation Commission, ex officio. No person shall be eligible for appointment to this board unless certified under this chapter, with the exception of the public member.

Sec. 9. 32 MRSA § 4907, sub-§ 2, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

2. Term. The term of office shall be 5 years, except for the members of the initial board, whose terms shall be 5 years, 4 years, 3 years and 2 years. As a member's term expires, he shall be replaced by a person of such background that the nature of the board shall remain as defined above. Vacancies occurring prior to the expiration of the specified term shall be filled by appointment for the unexpired term. No person shall serve as a member of the board for more than 2 consecutive terms. A board member shall hold office until the expiration of the term for which he has been appointed and until his successor has been appointed and qualified. A board member may be removed for cause by the Governor.

Sec. 10. 32 MRSA § 4907, sub-§ 4, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

4. Meetings; reports. The board shall meet annually and at such other times as it may determine. A public announcement of such meetings shall be published in the newspapers of record of the State.

The board shall every 2 years elect a chairman who shall be a member of the board. No chairman shall succeed himself. Four members shall constitute a quorum.

Sec. 11. 32 MRSA § 4908, sub-§§ 4 and 5 are enacted to read:

4. Employees. The board may employ such clerical help, other assistants or professional consultants as are necessary for the proper performance of its duties under this chapter.

5. Code of ethics. The board shall cause to be prepared and adopt a code of professional conduct which shall be made known in writing to each applicant and registrant. Each applicant shall subscribe to this code of ethics by signature with his application for certification. Registrants shall subscribe to this code by signature upon application for renewal of certification.

The code of ethics shall be published in the register provided for in subsection 1. This publication shall constitute due notice to all registrants. The board may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of its revision. This notification shall be acknowledged by the registrants by signature to the revised code.

Sec. 12. 32 MRSA § 4909, sub-§ 2 as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

2. **Geologist examination requirements.** As a geologist, to qualify to sit for the examination for certification, an applicant shall:

A. Be a graduate of an accredited college or university with a major in geological sciences, or have completed 30 credits in geological sciences at an accredited college or university, or have at least 7 years of professional geological work which shall include either a minimum of 3 years of professional geological work under the supervision of a qualified geologist or a minimum of 5 years of responsible charge of geological work;

B. Have acquired 7 years of experience in responsible charge of geological work, toward which an undergraduate degree with 30 credit hours or more in geological science courses shall count as 2 years of training and each year of graduate study in the geological sciences shall count as $\frac{1}{2}$ year of training, up to a maximum of 2 years of credit; and

C. Receive credit toward the experience requirement subject to the evaluation of the board. Applicants with less than 30 credit hours in geological science courses may be given proportional work-experience credits for such academic credit hours as they may have acquired.

Sec. 13. 32 MRSA § 4909, sub-§ 2-A is enacted to read:

2-A. **Soil scientist examination requirements.** As a soil scientist, to qualify to sit for the examination for certification, an applicant shall:

A. Be a graduate of an approved 4-year college curriculum leading to a Baccalaureate Degree, in which the applicant has successfully completed a minimum of 15 credit hours of soil or soil related courses of a pedological nature and have a specific record of an additional 3 years or more of experience in soil science of a grade and character which indicates to the board that he may be competent to practice as a soil scientist and be otherwise qualified. Teaching pedological courses in a college or university offering an approved 4-year soil science or agronomic curriculum shall be considered as experience in soils investigations.

“Additional 3 years of experience” does not imply a sequence of obtaining a degree and then experience. Experience time shall not be granted for time while enrolled in courses, but summer employment shall be counted even though a degree may not have been obtained.

Actual field experience in an acceptable apprenticeship program shall count as experience time.

Each degree beyond the Bachelor’s Degree shall be counted as one year of experience.

Soil related courses will amount to only 20% of the required 15 credits for a maximum of 3 credits.

Sec. 14. 32 MRSA § 4910, first sentence, as enacted by PL 1973, c. 558, § 1, is amended to read:

A certificate as a geologist or soil scientist expires at 12 p.m. on December 31st of each ~~even numbered~~ year.

Sec. 15. 32 MRSA § 4912, sub-§ 2, as enacted by PL 1973, c. 558, § 1, is amended to read:

2. The initial and annual renewal fees for certification as a geologist or soil scientist shall be fixed at \$15.

Sec. 16. 32 MRSA § 4912, sub-§ 3 is enacted to read:

3. Fees for examination shall be established by the board to cover the cost of such examination.

Sec. 17. 32 MRSA § 4913, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

§ 4913. Complaints; violations; investigations; revocations

1. Powers of board and Administrative Court Judge concerning complaints. The board shall investigate or cause to be investigated all complaints against certified geologists or soil scientists and persons granted temporary authorizations pursuant to this chapter and all cases of violations of this chapter. The board shall have the authority, after hearing as prescribed in this section, to refuse to issue or renew a license, or to suspend a license until the complaint can be heard by the Administrative Court Judge. The Administrative Court Judge shall have the power to suspend or revoke the license of any registrant who is found guilty of:

A. The practice of any fraud or deceit in obtaining a certificate or registration;

B. Any gross negligence, incompetence or misconduct in the practice of geology or soil science;

C. Any felony or any crime adversely affecting the ethical standards of the professions regulated by this chapter; or

D. The commission of any unlawful act as set forth in this chapter.

2. Preferring of charges. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any certified geologist or soil scientist. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

3. Time for hearing of charges. All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within 3 months after the date on which they shall have been preferred.

4. Procedures. The time and place for the hearing shall be fixed by the board and a copy of the charges along with a notice of the time and place of hearing shall be personally served on or sent by registered mail to the last known address of the registrant, at least 30 days before the date set for the hearing. At any hearing the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him and to produce witnesses and evidence in his own defense. The proceedings of the hearing shall be recorded and, as necessary, transcribed in accordance with the rules and regulations to be adopted by the board.

Sec. 18. 32 MRSA § 4914, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in place thereof:

§ 4914. Reissuance of certificate

The board, for reasons it may deem sufficient, may reissue, following a previous revocation or nonrenewal, a certificate as a certified geologist or soil scientist to any person whose certificate has been revoked, provided 5 members vote in favor of the reissuance.

Sec. 19. 32 MRSA § 4915, last sentence, as enacted by PL 1973, c. 558, § 1, is amended to read:

It shall be the duty of the ~~secretary~~ chairman of the board, under the direction of the board, to aid such officers in the enforcement of this chapter.

Sec. 20. 32 MRSA § 4918, as enacted by PL 1973, c. 558, § 1, and amended by PL 1975, c. 623, § 51-D, is repealed and the following enacted in place thereof:

§ 4918. Plans prepared

All geologic plans, specifications, reports or documents which are prepared by a certified geologist or by a subordinate under his direction shall be signed by such geologist, which shall indicate his responsibility for them.

All pedological maps, reports or documents which are prepared by a certified soil scientist or by a subordinate under his direction shall be signed by such certified soil scientist, which shall indicate his responsibility for them.

STATEMENT OF FACT

The new draft clarifies the drafting of the bill to resolve problems of interpretation of the scope of authority of geologists and soil scientists and of professional engineers.

The original L. D. was intended to fill a gap in the law creating the board, which has not provided any means of enforcement against members of the professions who violated the law. The new draft changes these provisions of the L. D. by giving the ultimate power of revocation of license to the Administrative Court Judge rather than to the board itself.

In addition, the new draft adds provisions to clarify the State Plumbing Code as it affects geologists, soil scientists, professional engineers and other persons evaluating soils for subsurface sewage disposal. The current edition of the Plumbing Code provide for a site investigator's report assessing the suitability of soils for subsurface sewage disposal systems. Furthermore, Chapter 438 of the Public Laws of 1975 authorized the department to certify engineers, geologists and soil scientists and others to do site evaluations within the shoreland zoned areas for private sewage disposal purposes. This authorization, as worded, provided no mechanism for removing certification should

an individual not perform in a satisfactory manner. In addition, chapter 438 appears to set up a double standard resulting in confusion since the law does not address nonshoreland zoned areas. The new draft will extend the coverage to the entire State and will hopefully eliminate the existing problems.

Careful reading of chapter 521 of the Public Laws of 1973 suggests that the Department of Human Services may not have the authority to write rules and regulations relating to subsurface sewage disposal systems. The new draft would clarify the department's authority to write rules and regulations for subsurface sewage disposal.