

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1349

H.P. 1012

House of Representatives, March 5, 2001

**An Act to Transfer Oversight of Geologists to the Bureau of Geology
and Natural Areas.**

Reference to the Committee on Business and Economic Development suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative DUPLESSIE of Westbrook.
Cosponsored by Senator TREAT of Kennebec, Senator WOODCOCK of Franklin and
Representatives: COLWELL of Gardiner, COWGER of Hallowell, DAIGLE of Arundel,
DORR of Camden, GOOLEY of Farmington, KOFFMAN of Bar Harbor, MICHAUD of Fort
Kent.

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

2
4 **Sec. 1. 5 MRSA §12004-A, sub-§19**, as amended by PL 1999, c.
687, Pt. B, §1, is further amended to read:

6 **19.** State Board \$35/Day 32 12 MRSA
of Certification for §4907 §544-I
8 Geologists and Soil Sci-
entists

10 **Sec. 2. 12 MRSA c. 201-A, sub-c. I-A** is enacted to read:

12
14 SUBCHAPTER I-A

16 GEOLOGISTS AND SOIL SCIENTISTS

18 §544-D. Short title

20 This subchapter may be known and cited as the "Geologists
22 and Soil Scientists Certification Act."

24 §544-E. Definitions

26 As used in this subchapter, unless the context otherwise
indicates, the following terms have the following meanings.

28 1. Board. "Board" means the State Board of Certification
30 for Geologists and Soil Scientists.

32 2. Certified geologist. "Certified geologist" means a
person entitled under this subchapter to take and use that title.

34 3. Certified soil scientist. "Certified soil scientist"
36 means a person entitled under this subchapter to take and use
that title.

38 4. Geologist. "Geologist" means a person engaged in the
40 practice of geology.

42 5. Geology. "Geology" means that science that treats the
earth as a whole, the investigation of its composition, its size,
44 shape and relationships between consolidated and unconsolidated
rock units in the regolith and bedrock and the applied aspects of
46 utilizing knowledge of the earth and its constituents, including
its consolidated and unconsolidated rock units, its minerals,
48 liquids, gases and other materials for the benefit of humankind.

50 6. Pedology. "Pedology" means that aspect of soil science
that involves, among others, the nature, properties, formation,

2 classification, functioning behavior and response to use and
3 management of soils, including the mapping and identification of
4 soils and the interpretation of soil properties. Pedology
5 centers on soils as the biochemically weathered part of the
6 earth's crust, the collection of natural bodies on the earth's
7 surface, supporting plants with a lower limit at the deeper of
8 either the unconsolidated mineral or organic material lying
9 within the zone of rooting of the native perennial plants or
10 where horizons impervious to roots have developed the upper few
11 feet of the earth's crust having properties differing from the
12 underlying rock material as a result of interactions between
13 climate, living organisms, parent material and relief.

14 7. Practice of geology. "Practice of geology" means the
15 performance of geological work or service for the public,
16 including, but not limited to, consultation, investigation,
17 surveys, evaluation, planning, mapping or inspection of
18 geological work, in which the performance is related to the
19 public welfare or the safeguarding of life, health, property and
20 the environment.

22 8. Practice of soil science. "Practice of soil science"
23 means any professional service that requires the application of
24 pedological principles and data. That professional service
25 includes identification and mapping of soils according to the
26 standards of the National Cooperative Soil Survey, or its
27 successor entity, consultation or evaluation.

28 9. Qualified soil scientist. "Qualified soil scientist"
29 means a person who, by reason of that person's knowledge of
30 pedology and the biological and physical sciences, acquired by
31 professional education and practical experience, is qualified to
32 engage in the practice of soil science.

34 10. Qualified geologist. "Qualified geologist" means a
35 person who possesses the qualifications specified for
36 certification, except that that person is not certified.

38 11. Responsible charge of work. "Responsible charge of
39 work" means the independent control and direction, by the use of
40 initiative, skill and independent judgment, of work or the
41 supervision of that work.

44 12. Subordinate. "Subordinate" means any person who assists
45 a certified geologist or certified soil scientist without
46 assuming the responsible charge of work.

48 **§544-F. Effect of law; organization**

1 **1. Prohibition against practice of geology or soil science**
2 **without certification.** A person may not practice or offer to
3 **practice geology or soil science in the State without**
4 **certification in accordance with this subchapter, unless**
5 **specifically exempted from the certification requirement by this**
6 **subchapter.**

7 **2. Effect.** This subchapter may not be construed to affect
8 **or prevent the practice of any other legally recognized**
9 **profession.**

10 **3. Corporations, partnerships, associations and government**
11 **agencies.** This subchapter does not prohibit one or more
12 **geologists or soil scientists from practicing through the medium**
13 **of a sole proprietorship, partnership, corporation or government**
14 **agency. In such a partnership or corporation whose primary**
15 **activity consists of geological services, or in a government**
16 **agency in which geological work is done, at least one partner,**
17 **officer or employee must be a certified geologist. In such a**
18 **partnership or corporation whose primary activity consists of**
19 **soil science services, or in a government agency in which soil**
20 **science work is done, at least one partner, officer or employee**
21 **must be a certified soil scientist. In the case of an agency of**
22 **State Government, the Department of Administrative and Financial**
23 **Services, Bureau of Human Resources shall classify officers and**
24 **employees under the Civil Service Law in a manner that ensures**
25 **that at least one certified geologist or certified soil scientist**
26 **works for each agency in which geological or soil science work is**
27 **done and that any officer or employee who is engaged in the**
28 **practice of geology or soil science and who is uncertified works**
29 **as a subordinate to a certified geologist or certified soil**
30 **scientist and does not have responsible charge of work or**
31 **evaluation.**

32 **§544-G. Exemptions**

33 The following persons are exempt from the certification
34 **requirement imposed by this subchapter:**

35 **1. Nonresident practicing less than 30 days.** A person not
36 **a resident of and having no established place of business in this**
37 **State, practicing or offering to practice the profession of**
38 **geologist or soil scientist when that practice does not exceed in**
39 **the aggregate more than 30 days in any calendar year, provided**
40 **that the person is legally qualified by registration to practice**
41 **the profession in that person's own state or country in which the**
42 **requirements and qualifications for obtaining a certificate of**
43 **registration are equivalent to those specified in this subchapter;**
44

2 2. Nonresident becoming resident or person practicing more
3 than 30 days. A person not a resident of and having no
4 established place of business in this State, or who has recently
5 become a resident of this State, practicing or offering to
6 practice for more than 30 days in any calendar year the
7 profession of geologist or soil scientist, if the person has
8 filed with the board an application for certification and has
9 paid the fee required by this subchapter. The exemption
10 continues only for such time as the board requires for the
11 consideration of the application for registration, provided that
12 such a person is legally qualified to practice that profession in
13 that person's own state or country in which the requirements and
14 qualifications for obtaining a certificate of registration are
15 equivalent to those specified in this subchapter;

16 3. Certain employees. An employee, associate or
17 subordinate of a person holding a certificate of registration
18 under this subchapter, or an employee of a person exempted from
19 certification by subsection 1 or 2, provided that the work of the
20 employee, associate or subordinate does not include responsible
21 charge of work or evaluation; and

22 4. Federal Government employees. An officer or employee of
23 the Federal Government while engaged within this State in the
24 practice of the profession of geologist or soil scientist for the
25 Federal Government.

26 **§544-H. Subsurface sewage disposal**

27 A person who is licensed by the Department of Professional
28 and Financial Regulation pursuant to Title 22, section 42,
29 subsection 3-A to evaluate soil for subsurface sewage disposal is
30 exempt from the certification requirement of this subchapter if
31 the person's soil evaluation work relates solely to subsurface
32 sewage disposal systems.

33 **§544-I. Board**

34 The State Board of Certification for Geologists and Soil
35 Scientists as established by Title 5, section 12004-I, subsection
36 19 administers this subchapter and its office is within the
37 Bureau of Geology and Natural Areas. The board consists of 7
38 members, 5 of whom are appointed by the Governor from the
39 following categories: one academic geologist; one independent
40 consultant or salaried geologist; one independent consultant or
41 salaried soil scientist; one other soil scientist; and a
42 representative of the public. The 6th and 7th members must be the
43 State Soil Scientist with the State Soil and Water Conservation
44 Commission, ex officio, and the State Geologist or the State
45 Geologist's designee, who must be a geologist employed in State

2 Government, ex officio. A person, except the representative of
3 the public, may not be eligible for appointment to the board
4 unless certified under this subchapter.

5 1. Qualifications. Each member of the board must be a
6 citizen of the United States and a resident of this State for at
7 least 5 years immediately preceding the member's appointment.

8 2. Term. Appointments are for 5-year terms. Appointments
9 of members must comply with Title 32, section 60. A board member
10 may be removed for cause by the Governor.

11 3. Meetings. The board shall meet at least once a year to
12 conduct its business and to elect its officers. Additional
13 meetings may be held as necessary to conduct the business of the
14 board and be convened at the call of the chair or a majority of
15 the board members. The board shall, every 2 years, elect a chair
16 who is a member of the board. A chair may not serve more than 2
17 consecutive terms.

18 Four members constitute a quorum.

19 The board shall keep records and minutes that are necessary to
20 the ordinary dispatch of its functions.

21 4. Hearings. Hearings may be conducted by the board to
22 assist with investigations, to determine whether grounds exist
23 for suspension, revocation or denial of a certification or as
24 otherwise necessary to the fulfillment of its responsibilities
25 under this subchapter.

26 The board may not refuse to renew a certificate for any reason
27 other than failure to pay a required fee, unless it has afforded
28 the certificate holder an opportunity for an adjudicatory
29 hearing. The board shall hold an adjudicatory hearing at the
30 written request of any person who is denied a certificate without
31 a hearing for any reason other than failure to pay a required
32 fee, provided that the request for hearing is received by the
33 board within 30 days of the applicant's receipt of written notice
34 of the denial of the applicant's application, the reasons for the
35 denial and the applicant's right to request a hearing. Hearings
36 are conducted in conformity with Title 5, chapter 375, subchapter
37 IV. The board may subpoena witnesses, records and documents in
38 any hearing it conducts.

39 5. Powers and duties. The board may adopt, amend or repeal
40 rules pursuant to Title 5, chapter 375, subchapter II to carry
41 out this subchapter, including, but not limited to, rules
42 relating to professional conduct in accordance with the policy of
43 this subchapter. Rules adopted pursuant to this subsection are
44

2 routine technical rules as defined in Title 5, chapter 375,
3 subchapter II-A.

4 A. The Bureau of Geology and Natural Areas shall compile
5 and maintain a complete and up-to-date list of all
6 certifications. The list must be made available to any
7 person upon request.

8
9 B. On or before August 1st of each year, the board shall
10 submit to the director of the survey for the preceding
11 fiscal year ending June 30th its annual report of its
12 operations and financial position, together with such
13 comments and recommendations as the director considers
14 essential.

15 C. The board shall establish relations with entities that
16 regulate the practice of geology and the practice of soil
17 science or closely related disciplines or that certify
18 geologists or soil scientists in other states and may
19 establish relations with such entities in other countries
20 for the purposes of achieving uniformly high professional
21 standards and mutual recognition of certification.

22
23 **§544-J. Certification procedure**

24
25 An application for certification as a geologist or soil
26 scientist must be made to the board on a form prescribed by the
27 board and must be accompanied by the prescribed application fee.

28
29 An applicant for certification as a geologist or soil
30 scientist must meet the following standards.

31
32 **1. High ethical professional standards.** The applicant must
33 possess high ethical professional standards.

34
35 **2. Geologist examination requirements.** To qualify to sit
36 for the examination for certification as a geologist, an
37 applicant must:

38
39 A. Be a graduate of an accredited college or university
40 with a major in geological sciences, have completed 30
41 credits in geological sciences at an accredited college or
42 university or have at least 7 years of professional
43 geological work that includes either a minimum of 3 years of
44 professional geological work under the supervision of a
45 qualified geologist or a minimum of 5 years of responsible
46 charge of geological work;

47
48 B. Have acquired 7 years of experience in responsible
49 charge of geological work, toward which an undergraduate
50

2 degree with 30 credit hours or more in geological science
4 courses counts as 2 years of training and each year of
6 graduate study in the geological sciences counts as 1/2 year
8 of training, up to a maximum of 2 years of credit; and

10 C. Receive credit toward the experience requirement subject
12 to the evaluation of the board. An applicant with less than
14 30 credit hours in geological science courses may be given
16 proportional work-experience credits for such academic
18 credit hours as the applicant may have acquired.

20 3. Soil scientist examination requirements. To qualify to
22 sit for the examination for certification as a soil scientist, an
24 applicant must be a graduate of an approved 4-year college
26 curriculum leading to a Baccalaureate Degree, in which the
28 applicant has successfully completed a minimum of 15 credit hours
30 of soil or soil-related courses of a pedological nature and have
32 a specific record of an additional 3 years or more of experience
34 in soil science of a grade and character that indicates to the
36 board that the applicant is competent to practice as a soil
38 scientist and is otherwise qualified. Teaching pedological
40 courses in a college or university offering an approved 4-year
42 soil science or agronomic curriculum must be considered as
44 experience in soils investigations.

46 Applicants may sit for the general practice examination upon
48 graduation from an approved 4-year college and may sit for the
50 professional practice examination upon completion of the
experience requirement stated in this subsection.

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

Actual field experience in an acceptable apprenticeship program
counts as experience time.

Each degree beyond the bachelor's degree counts as one year of
experience.

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

46 4. Pass examination before board. The applicant must sit
48 for and pass an examination before the board or its authorized
50 representatives. Such examinations are held at certain specified
times and are of a scope prescribed by the board.

2 The examinations must test the applicant's knowledge basic
3 to geology or soil science and ability to apply that knowledge
4 and to assume responsible charge of work in the practice of
5 geology or the practice of soil science.

6 An applicant for certification must meet all the
7 requirements of this subchapter and, in addition, have 3 years'
8 experience in geology or soil science as described by this
9 subchapter and in the rules of the board.

10 An applicant who fails an examination may be examined again
11 upon filing a new application and the payment of the prescribed
12 fees.

13 The board, upon application on its prescribed form and upon
14 the payment of the application and certification fees, may issue
15 a certificate as a geologist or soil scientist without written
16 examination to any person holding a certificate as a geologist or
17 soil scientist issued by any state or country having equivalent
18 requirements, when the applicant's qualifications meet the other
19 requirements of this subchapter and the rules established by the
20 board.

21 In determining the qualifications of an applicant for
22 certification, a majority vote of the board is required.

23 An applicant who has passed the examination or has otherwise
24 qualified as a geologist or soil scientist upon payment of the
25 certification fee fixed by this subchapter must be granted a
26 certificate as a geologist or soil scientist as appropriate.

27 **§544-K. Expiration and renewal**

28 Certification expires on December 31st annually and becomes
29 invalid on that date unless renewed. The Bureau of Geology and
30 Natural Areas shall notify every person certified under this
31 subchapter of the certificate expiration date and the amount of
32 the fee that is required at the person's last known address. The
33 notice must be mailed at least one month in advance of the
34 expiration date.

35 A certificate may be renewed up to 90 days after the date of
36 expiration upon payment of a late fee in addition to the renewal
37 fee. A person who submits an application for renewal more than
38 90 days after the certificate renewal date is subject to all
39 requirements governing new applicants under this subchapter,
40 except that the board may, in its discretion, giving due
41 consideration to the protection of the public, waive examination
42 if the renewal application is made within 2 years from the date
43 of the expiration.

2 **§544-L. Fees**

4 The director of the survey may establish by rule fees for
6 purposes authorized under this subchapter in amounts that are
8 reasonable and necessary for their respective purposes, except
 that the fee for any one purpose may not exceed \$250 annually.

10 **§544-M. Complaints; violations; investigations; revocations**

12 **1. Powers of board and District Court concerning**
14 **complaints.** The board shall investigate or cause to be
16 investigated all complaints against certified geologists or
18 certified soil scientists and persons granted temporary
20 authorizations pursuant to this subchapter and all cases of
 violations of this subchapter. The board may, pursuant to Title
 5, section 10004, suspend or revoke a certificate issued by it.
 In addition, the board may refuse to issue or renew the
 certificate or the District Court may, pursuant to Title 4,
 chapter 5, suspend, revoke or refuse to renew the certificate of
 any registrant who is found guilty of:

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

26 B. Gross negligence, incompetence or misconduct in the
28 practice of geology or soil science;

30 C. A felony or crime adversely affecting the ethical
32 standards of the professions regulated by this subchapter,
 subject to the limitations of Title 5, chapter 341; or

34 D. A violation of this subchapter or a rule of the board.

36 **2. Preferring of charges.** A person may register a complaint
38 of fraud, deceit, gross negligence, incompetency or misconduct
40 against a certified geologist or certified soil scientist. The
 complaint must be in writing and be sworn to by the person making
 the complaint and be filed with the secretary of the board.

42 **3. Reissuance of certificate.** The board, for reasons it
44 determines sufficient, may reissue, following a previous
46 revocation or nonrenewal, a certificate as a certified geologist
 or certified soil scientist to a person whose certificate has
 been revoked or has not been renewed, provided 5 members vote in
 favor of the reissuance.

48 **4. Enforcement.** It is the duty of the respective officers
50 charged with the enforcement of laws and ordinances to prosecute
 a person charged with a violation of a provision of this

2 subchapter. It is the duty of the chair of the board, under the
3 direction of the board, to aid such officers in the enforcement
4 of this subchapter.

6 **§544-N. Plans prepared**

8 All geologic plans, specifications, reports or documents
9 that are prepared by a certified geologist or by a subordinate
10 under the geologist's direction must be signed by the geologist,
11 which indicates the geologist's responsibility for those geologic
12 plans, specifications, reports or documents.

14 All pedological maps, reports or documents that are prepared
15 by a certified soil scientist or by a subordinate under the soil
16 scientist's direction must be signed by that certified soil
17 scientist, which indicates the soil scientist's responsibility
18 for those pedological maps, reports or documents.

20 **§544-O. Penalties; injunction**

22 A person who violates a provision of this subchapter is
23 guilty of a Class E crime.

24 The State may bring an action in Superior Court to enjoin a
25 person from violating this subchapter, regardless of whether
26 proceedings have been or may be instituted in the District Court
27 or whether criminal proceedings have been or may be instituted.

28 **§544-P. Receipts and disbursements**

30 All fees received by the board under this subchapter must be
31 used to carry out the purposes of this subchapter. Any balance
32 of those fees may not lapse, but must be carried forward as a
33 continuing account to be expended for the same purposes in the
34 following fiscal years.

36 **Sec. 3. 32 MRSA c. 73, as amended, is repealed.**

38 **Sec. 4. Revisor's review; cross-references.** The Revisor of
40 Statutes shall review the Maine Revised Statutes and include in
41 the errors and inconsistencies bill submitted to the Second
42 Regular Session of the 120th Legislature pursuant to Title 1,
43 section 94 any sections necessary to correct and update any
44 cross-references in the statutes to provisions of law repealed in
45 this Act.

SUMMARY

2

4 This bill transfers oversight of geologists and soil
6 scientists from the Department of Professional and Financial
Regulation to the Department of Conservation, Bureau of Geology
and Natural Areas.