

SENATE BILL 1916

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 18 and Section 68-221-409, to enact the "Soil Scientist Licensure Act of 2009."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 18, is amended by adding Sections 2 through 20 as a new part.

SECTION 2. This part shall be known and may be cited as the "Soil Scientist Licensure Act of 2009".

SECTION 3. The general assembly finds that the competent and proper application of soil science principles by soil scientists is vital to the lives, property, economy, security, and environment of the people of this state. In order to safeguard life, health, and property and to promote the public welfare, the practice of soil science in this state is hereby declared to be subject to regulation in the public interest. Furthermore, the practice of soil science is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of other learned professions in this state. The purpose of this part is to introduce additional qualifying criteria in a professional field at present only partially regulated, thereby benefiting the safety, health, and property of the people of Tennessee and promoting the public welfare. The fields of soil science expected to benefit are those related to the environment, soil classification and mapping, the inventory of the soil as a resource, basic soil science research, and other soil science matters of concern to the people of this state. This legislation does not attempt to infringe upon the current licensed professions of engineers, geologists, surveyors, or the persons who work directly for them as either their

employees or as subcontractors. This legislation differentiates the principles of soil science from those respected and established fields.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Board" means the registered land surveyors board established by § 62-18-103;

(2) "Classification" means the use and application of the current United States department of agriculture (USDA) soil taxonomy standard as revised, classifying soils to the order, suborder, great group, subgroup, family, series, or phase of series level;

(3) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(4) "Department" means the department of commerce and insurance;

(5) "Licensed professional soil scientist" means a person who is licensed as a soil scientist under the provisions of this part;

(6) "Practice of soil science" means providing soil science services except as specifically exempted by this part. Soil science services include the investigation, inspection, collection, or evaluation of soil as a means to classify soil pursuant to the use and application of the USDA soil taxonomy standard, as revised, or the interpretation, inventory, planning, or mapping resulting from classifying soils;

(7) "Responsible charge of work" means accountable, independent control and direction by the use of initiative, skill, and independent judgment, of soil science work or supervision of soil science work;

(8) "Soil science" means the science concerning the earth's mantle and its use by all humans including:

(A) The classification, investigation, mapping and inventorying of soil; and

(B) The study of the interaction of soil forming factors;

- (i) Climate;
- (ii) Organisms;
- (iii) Relief;
- (iv) Parent material; and
- (v) Time;

(9) "Soil scientist" means a person qualified by education and practical experience to engage in the practice of soil science; and

(10) "Soil scientist in training" means a person who has met or is pursuing the educational requirements of Section 9 of this act, but is not qualified to be licensed as a professional soil scientist.

SECTION 5. No person shall:

(1) Classify soils pursuant to the use and application of the USDA soil taxonomy standard, as revised, prepare any soil maps, reports, or documents resulting from the classification of soils, other than a licensed professional soil scientist or a subordinate under such soil scientist's direction;

(2) Practice soil science in this state unless such person is licensed under the provisions of this part. A certificate of licensure is not transferable;

(3) Offer to practice soil science in this state unless such person is licensed under the provisions of this part. To offer to practice soil science in this state includes the making of a verbal claim, displaying a sign or other advertisement, using letterhead, printing cards, or using in connection with a person's name any title or description stating or implying that the person is a licensed professional soil scientist;

(4) On or after January 1, 2010, seal or stamp any plans, plats, reports or other documents with the seal or stamp of a licensed professional soil scientist, or use in any

manner the title "licensed professional soil scientist" or the title of any licensed certified specialty soil scientist unless licensed or licensed and certified under this part;

(5) Affix such person's signature, seal, or stamp to any maps, reports, or other documents after such person's licensure has expired or has been suspended or revoked, unless such person's licensure has been renewed or reissued;

(6) Give any false or forged evidence of any kind to the board when seeking to obtain the person's certificate of licensure;

(7) Falsely impersonate any other licensee of like or different name; or

(8) Attempt to use an expired or revoked certificate of licensure or continue to practice soil science at any time during a period during which the board has suspended or revoked the person's certificate of licensure.

SECTION 6. This state and any county, municipality, agency, board, district, commission, authority, or other political subdivision of the state shall only contract for soil science services with persons licensed under this part or with a firm employing a licensed professional soil scientist who shall be in responsible charge of providing such services, except as otherwise provided by this part.

SECTION 7. Any person, except a person exempted by this part, who practices or offers to practice soil science in this state, including a person employed by the state or its political subdivisions, is subject to the provisions of this part. The following persons are exempt:

(1) Any person engaged solely in teaching the science of soil science or engaged solely in nonpublic soils research in this state. However, a teacher or researcher shall be certified as licensed professional soil scientist if the teacher or researcher wishes to engage in the practice of soil science or services for which licensure as a soil scientist is required by this part;

(2) An employee or subordinate of a licensed professional soil scientist insofar as the employee or subordinate acts solely in such capacity. This exemption shall not permit any such employee or subordinate to practice soil science independently or use the term "licensed professional soil scientist"; and

(3) Any person who is employed either by the state or federal government, or by a person, firm, or corporation not engaged in the practice of soil science, if such person provides soil science services only as part of his job duties for the employer and does not receive any payments for soil science services from the general public.

SECTION 8.

(a) A sole proprietorship, partnership, or corporation that provides soil science services as defined in this part as its primary activity may engage in the practice of soil science; provided, that at least one (1) principal or officer is in responsible charge of such activity and is a licensed professional soil scientist. A sole proprietorship, partnership, or corporation whose primary activity is other than the practice of soil science may offer soil science services; provided, that a licensed professional soil scientist is in responsible charge of such activity. The exemptions of Section 7 of this act shall apply to sole proprietorships, partnerships, and corporations.

(b) This part shall not be construed to prevent or to affect the practice of any profession or trade related to soil science for which a license or registration is required under any other law of this state when such work is permitted under the applicable licensing or registration law, or the right of licensed professional engineers or their employees and subcontractors to lawfully practice soil classification (other than defined in this part), foundation engineering, geotechnical engineering, soils mechanics, or other professional engineering as provided by title 62, chapter 2, or registered architects from lawfully practicing architecture as provided by title 62, chapter 2.

SECTION 9.

(a) To be eligible for a certificate of licensure, an applicant shall meet each of the following minimum qualifications:

(1) Be a graduate of an accredited college or university with a bachelor of science degree or higher in soils, agronomy or a closely related field. The applicant shall have successfully completed a minimum of fifteen (15) semester hours of course work in soil science;

(2) Have at least three (3) years of soil science professional experience. Any combination of the following kinds of education and experience qualify toward accumulating the required three (3) years:

(A) Masters of science degree in soils, agronomy or a closely related field and two (2) years of professional experience;

(B) Doctor of philosophy degree in soils, agronomy or a closely related field and one (1) year of professional experience; or

(C) Each year of teaching or soil science research by persons teaching upper-level soil science courses at the college or university levels; provided, that such teaching or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to a year of professional experience; and

(3) Have successfully passed such examination or examinations developed or determined by the board to assess adequately the knowledge and skills that are common to the competent practice of soil science as a profession. The board shall waive the examination requirement for licensure as a soil scientist for an applicant who makes written application to the board not later

than January 1, 2010, and who otherwise meets the requirements of this subsection (a).

(b) Any person who meets subdivisions (a)(1) and (2) and who is:

(1) Approved by the department of environment and conservation prior to January 1, 2010;

(2) An employee of the federal government 470 series;

(3) A soil scientist employed of the state Tennessee; or

(4) A member of the soil scientist association of Tennessee certified list prior to January 1, 2010;

shall be deemed to have met the requirements of subdivisions (a)(1) - (3). Such person shall be issued a certificate of licensure when renewal is due under the established renewal cycle upon applying for and meeting all requirements for renewal. The board shall assign the registration number of the registration certificate as the certificate of licensure number. Any person holding an active certificate as a registered soil scientist or licensed professional soil scientist prior to January 1, 2010, who does not renew such certificate when renewal is due shall be required to apply for licensure under this part and meet all requirements of subsection (a) except that a reasonable period of time shall be accorded by the board for late renewals.

SECTION 10.

(a) The board shall issue a certificate of licensure, upon payment of a fee prescribed by the board, to any applicant who complies with the requirements of this part. Certificates of licensure shall state the full name of the licensee, bear a certificate of licensure number and be signed by the commissioner or the commissioner's designee under the seal of the board.

(b) A certificate of licensure shall be valid for a period of two (2) years. A fee prescribed by the board shall be imposed for each late certificate of licensure renewal.

(c) A new certificate of licensure may be issued to replace any certificate of licensure lost, destroyed, or mutilated, subject to the rules of the board and payment of a fee prescribed by the board.

(d) Upon a written request accompanied by a fee prescribed by the board for change in status, a licensee shall be placed on retired or inactive status. No retired or inactive licensee shall engage in practicing soil science or services for which licensure as a soil scientist is required by this part. The board shall prescribe rules outlining the procedure for placing a licensee in retired or inactive status and subsequent reinstatement to active status.

SECTION 11.

(a) The commissioner shall establish a soil science advisory committee, referred to as the "advisory committee" or "SSAC", composed of five (5) members.

(b)

(1) In making appointments to the advisory committee, the commissioner shall strive to ensure that the SSAC includes at least:

(A) One (1) person who is female,

(B) One (1) person who is member of a racial minority; and

(C) One (1) person who is at least sixty (60) years of age.

(2) The commissioner may also strive to ensure that the soil scientist members are from each of the following professional groupings: academia, private consulting and government.

(c) The SSAC shall be administratively attached to the registered land surveyor's board.

(d) SSAC members shall receive no compensation, but shall be reimbursed for actual travel and other expenses incurred in attending each meeting and in performing any other duties provided for in this part. All reimbursement for such expenses shall be in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(e) The SSAC shall assist the commissioner with the promulgation of rules for the implementation of the requirements of this part.

SECTION 12. In addition to other powers and duties specified in this chapter, the board, under advisement from SSAC, shall:

(1) Promulgate rules and regulations necessary to carry out the provisions of this part in compliance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Design and adopt an official seal for licensed professional soil scientists to be applied to all drawings, reports, maps, documents, or other papers involving practicing soil science as defined in this part, that have been prepared or approved by a licensed soil scientist or a subordinate employee under such soil scientist's direction for the use of or for delivery to any person or for public record within this state. Such drawings, reports, maps, documents, or other papers shall be signed by the licensee and impressed with the licensee's seal. Such acts shall indicate a licensee's responsibility for such drawings, reports, or other papers or documents;

(3) Set the amount of all fees required by this part;

(4) Promulgate rules requiring continuing education;

(5) Identify and approve continuing education programs for persons regulated by the board under this part;

(6) Receive, administer, and account for all moneys derived under the provisions of this part, and transfer such funds to the state treasurer who shall keep such moneys in a fund, herein established, to be known as the "soil scientists fund." Such fund shall be used to defray expenses incurred in the administration of this part;

(7) Prepare, administer, and grade a nationally recognized soil scientist examination for the purposes of licensure as required by this part; and

(8) Have such other powers and duties as are necessary to effectuate the provisions of this part.

SECTION 13. Any applicant may, in the absence of disqualifying evidence, be deemed by the board to be fully qualified to practice soil science if such applicant holds a like, unexpired certificate of registration issued to the applicant after examination by proper authority in the District of Columbia or in any state or territory in the United States in which the examination and requirements for the registration of soil scientists are of a standard satisfactory to the board.

SECTION 14. Except as otherwise provided by this part, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications and other personal information submitted by applicants, except to the applicant, the board, department, its staff, or the SSAC; and

(2) Information submitted by a reference concerning an applicant, except to the board, department, its staff, or the SSAC.

SECTION 15. A roster showing the names and places of business of all licensed soil scientists shall be prepared by the secretary of the board each year. Copies of this roster shall be placed on file with the secretary of state and furnished to any licensee upon request, free of charge, or to the public upon request and payment of a fee, not to exceed cost, to be established by the board.

SECTION 16. The board shall promulgate a code of professional ethics that shall be made known in writing to every licensee and applicant for licensure under this part. The department may revise and amend this code of professional ethics from time to time and shall forthwith notify each licensee in writing of such revision or amendments.

SECTION 17. Any person may file a complaint with the commissioner against a licensee alleging fraud, deceit, gross neglect, incompetence, or misconduct. Complaints shall be made in writing.

SECTION 18.

(a) The board shall have the power to suspend, revoke, or refuse to renew the certificate of licensure of any licensee who:

(1) Is found to have been convicted of:

(A) Any fraud or deceit in obtaining a certificate of licensure;

(B) Any felony; or

(C) Any unlawful act as set forth in this chapter; or

(2) Who is found guilty of fraud, deceit, gross neglect, incompetence, or misconduct in the practice of soil science as a licensed professional soil scientist.

(b) Any such action by the board to suspend, revoke, or refuse to renew a certificate of licensure shall be taken after a hearing held in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Any administrative or judicial review of such action shall likewise be in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The board may seek relief at law or equity to restrain or enjoin any act or practice in violation of this part, or of any rule promulgated to effectuate the purposes of

this part. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(e) The board may reissue a certificate of licensure to any person whose certificate of licensure has been revoked upon written application to the board by the applicant, showing good cause to justify such reissuance.

(f) Members of the board are officers of the state in carrying out the duties imposed by this part and as such have the full measure of governmental immunity provided by law.

SECTION 19. Legal counsel shall be provided by the division of regulatory boards.

SECTION 20.

(a) A violation of this part is a Class B misdemeanor.

(b) In addition to, or in lieu of, any other lawful disciplinary action under this part, the commissioner may assess a civil penalty not exceeding one thousand dollars (\$1,000) per violation. All penalties owed under this part shall be paid to the board for deposit into the treasury of the state of Tennessee and shall accrue to the state and may be recovered in a civil action in the name of the state in any court of record in the county where the violation is alleged to have occurred.

(c) Any civil penalty shall be assessed in the following manner:

(1) A notice of such assessment shall be sent to the person receiving it by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may petition the commissioner for a review of the assessment;

(3) The petition for review shall be in writing, and shall be filed no later than thirty (30) days after the notice of assessment is received;

(4) If a petition for review of the assessment is not filed within thirty (30) days after the date the notice is received, then the violator shall be deemed to have consented to the assessment and it shall become final; and

(5) If a petition for review of the assessment is filed as provided by this section, then the proceedings on such appeal shall be conducted in accordance with the provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, with respect to the conduct of contested cases.

SECTION 21. Tennessee Code Annotated, Section 68-221-409, is amended by deleting all language following the first sentence of subsection (a) in its entirety.

SECTION 22. If any provision of this act or application thereof is held to be invalid by any court, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications and to this end the provisions of this act are declared to be severable.

SECTION 23. Section 11 of this act shall take effect upon becoming law, the public welfare requiring it. For the purpose of promulgation of rules and regulations, the provisions of this act shall take effect on becoming law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.