

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 1074
SENATE BILL 555

AN ACT ESTABLISHING REGULATION OF AND THE LICENSING OF THE PRACTICE OF GEOLOGY AND TO ESTABLISH THE QUALIFICATIONS, TRAINING AND EXPERIENCE FOR PERSONS SEEKING TO REPRESENT THEMSELVES TO THE PUBLIC AS GEOLOGISTS; CREATING A STATE BOARD FOR LICENSING OF GEOLOGISTS; DEFINING THE FUNCTIONS AND DUTIES OF THAT BOARD; AND PROVIDING FOR PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read as follows:

"CHAPTER 89E.

"Geologists Licensing Act.

"§ 89E-1. Short title.—This Chapter shall be known as the North Carolina Geologists Licensing Act.

"§ 89E-2. Purpose.—The purposes of this act are to protect life, property, health and public welfare through the regulation of the practice of geology in the State of North Carolina; to define the practice of geology as a profession, establishing minimum professional standards of ethical conduct, professional responsibility, educational and experience background; and to prevent abuses of the practice of geology by untrained or unprincipled individuals.

"§ 89E-3. Definitions.—When used in this Chapter, unless the context otherwise requires:

- (a) 'Board' means the North Carolina Board for Licensing of Geologists.
- (b) 'Geologist'. The term 'geologist', within the intent of this Chapter, shall mean a person who is trained and educated in the science of geology.
- (c) 'Geology' means the science dealing with the earth and its history; investigation, prediction and location of the materials and structures which compose it; the natural processes that cause change in the earth; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials for the benefit of mankind. This definition shall not include any service or creative works, the adequate performance of which requires engineering education, training, and experience.

(d) 'Public practice of geology' means the performance for others of geological service or work in the nature of work or consultation, investigation, surveys, evaluations, planning, mapping and inspection of geological work, in which the performance is related to the public welfare of safeguarding of life, health, property and

the environment, except as specifically exempted by this Chapter. This definition shall not include or allow the practice of engineering as defined in Chapter 89C of the North Carolina General Statutes.

(e) 'Licensed geologist' means a person who is licensed as a geologist under the provisions of this Chapter.

(f) The term 'responsible charge of work' means the independent control and direction by the use of initiative, skill and independent judgment of geological work or the supervision of such work.

(g) The term 'subordinate' means any person who assists a licensed geologist in the practice of geology without assuming the responsible charge of work.

(h) The term 'qualified geologist' means a person who possesses all of the qualifications specified in this Chapter for licensing except that he or she is not licensed.

(i) The term 'geologist-in-training' means a person who has taken and successfully passed the portion of professional examination covering fundamental or academic geologic subjects, prior to his completion of the requisite years of experience in geologic work as provided for in this Chapter.

(j) The term 'good moral character' means such character as tends to ensure the faithful discharge of the fiduciary duties of the licensed geologist to his client.

(k) 'License' means a certificate issued by the Board recognizing the individual named in this certificate as meeting the requirements for licensing under this Chapter.

"§ 89E-4. North Carolina Board for Licensing of Geologists; appointments; terms; composition.—(a) The North Carolina Board for Licensing of Geologists shall have the power and responsibility to administer the provisions of this Chapter in compliance with the Administrative Procedures Act, G.S. Chapter 150A.

(b) The Board shall consist of five members appointed by the Governor in the manner hereinafter prescribed, and in addition the State Geologist shall serve on the Board *ex officio*. The Governor may remove any member of the Board for neglect of duty or malfeasance or violation of this Chapter or conviction of a felony or other crime of moral turpitude, but for no other reason.

(c) Each member of the Board shall be a citizen of the United States and shall have been a resident of this State for at least six months immediately preceding his or her appointment.

(d) All members of the initial Board shall be appointed by the Governor and shall at the time of their appointment qualify for licensing under this Chapter except for the lay member appointee. At all times at least one member of the Board shall be an academic geologist; one member shall be a salaried company geologist; one member shall be an independent or consultant geologist; one member shall be a representative from the mining industry; one member shall be a consumer or lay member who is not a geologist; and in addition, the State Geologist shall serve as a permanent *ex officio* member.

(e) After the establishment of the initial Board, all members, with the exception of the lay member, shall be so licensed under the provisions of this Chapter. The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, one shall be appointed for a term of one year; two for terms of

two years; and two for terms of three years in the discretion of the Governor. No member shall serve more than two consecutive three-year terms without an interruption in service of at least one year.

(f) Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(g) Members of the Board may receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Chapter at the rates prescribed in G.S. 138-5, subject to availability of funds.

(h) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for performance of its functions, and fix their compensation within the limits of funds available to the Board.

"§ 89E-5. Functions and duties of the Licensing Board.—(a) The Board shall administer and enforce the provisions of this Chapter.

(b) The Board shall elect from its membership a chairman, a vice-chairman and a secretary-treasurer, and adopt rules, consistent with the Administrative Procedures Act, to govern its proceedings. A majority of the membership of the Board shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for licensing under this Chapter, and shall issue a license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter from the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year.

(f) The Board shall hold a meeting within 30 days after a quorum of its members is first appointed and thereafter shall hold at least two regular meetings each year.

(g) The Board shall establish and receive fees as required by this Chapter. In establishing fees, the Board shall consider exemptions from fees or a reduction in licensing fees for those persons otherwise qualified for licensing under this Chapter but who perform geologic work or services less than 15 days per year.

(h) The Board shall have such other powers and duties as are necessary to carry out the provisions of this Chapter.

(i) The Board shall have the power to establish or approve reasonable standards for licensing and renewal of licenses of geologists, including, but not limited to the power to adopt or use examination materials and accreditation standards of any duly professionally recognized accrediting agency. The Board shall have the power to establish reasonable standards for continuing professional education for geologists, provided that for renewal of license no examination shall be required.

"§ 89E-6. Exemptions.—Any person except as specifically exempted below who shall publicly practice or offer to publicly practice geology in this State is subject to the provisions of this Chapter. The following persons are exempt:

(a) Persons engaged solely in teaching the science of geology or engaged solely in geologic research in this State may pursue their teaching and/or research without licensing. A teacher or researcher must, however, be a licensed geologist if he or she performs geologic work and services for which a licensed geologist is required by this Chapter.

(b) Officers and employees of the United States of America and the State of North Carolina practicing solely as such officers or employees.

(c) Officers and employees of petroleum companies practicing solely as such officers and employees and not offering their professional services to the public for hire.

(d) A subordinate to a geologist or a geologist-in-training licensed under this Chapter insofar as he or she acts solely in such capacity. This exemption does not permit any such subordinate to practice geology for others in his own right or use the term 'Licensed Geologist'.

"§ 89E-7. Limitations.—(a) This Chapter does not prohibit one or more geologists from practicing through the business organization of a sole proprietorship; partnership; corporation or professional association. In a partnership or corporation or professional association, the primary activity of which consists of geological services, at least one partner or officer shall be a licensed geologist as defined in this Chapter.

(b) This Chapter shall not be construed to prevent or to affect:

(1) The practice of any profession or trade for which a license is required under any other law of this State, or the practice of Registered Professional Engineers from lawfully practicing soils mechanics, foundation engineering and other professional engineering as provided in the North Carolina General Statutes, or licensed architects or landscape architects from lawfully practicing architecture or landscape architecture, or the practice of soil science by professionals certified by the Soil Science Society of North Carolina, respectively as provided in the General Statutes;

(2) The public practice of geology by a person not a resident of and having no established place of business in this State, when such practice does not exceed in the aggregate more than 90 days in any calendar year, and provided such person is duly licensed to practice such profession in another state where the requirements for a license are not lower than those specified in this Chapter for obtaining the license required for such work; and provided further that such nonresident shall file with the Board within 10 days of entering this State for commencing of such work, a statement giving his name, residence, the number of his license, and by what authority issued, and upon the completion of the work, a statement of the time engaged in such work within the State; or

(3) The practice of a person not a resident and having no established place of business in this State, or who has recently become a resident hereof, practicing or offering to practice herein for more than 90 days in any calendar year the profession of geology, if he is licensed in another

state or qualified as defined herein, if he shall have filed with the Board an application for a license and shall have paid the fee required by this Chapter. Such practice shall be deemed a provisional practice and shall continue only for such time as the Board requires reasonably for the consideration of the applicant for licensing under this Chapter as a geologist.

"§ 89E-8. Applications.—An application for licensing as a geologist shall be made under oath, shall show the applicant's education and a summary of his geological work, plus other relevant criteria to be determined by the Board. The Board shall have the power to determine a reasonable application fee which shall accompany each application.

"§ 89E-9. Minimum qualifications.—An applicant shall be eligible for a license as a geologist in North Carolina provided that each applicant meets the following minimum qualifications:

- (a) Be of good moral and ethical character.
- (b) Have graduated from an accredited college or university, and have a degree with a major in geology, engineering geology or geological engineering or related geologic science; or have completed 30 semester hours or the equivalent in geological science courses leading to a major in geology, of which at least 24 hours of the equivalent were upper level undergraduate courses or graduate courses. The Board shall waive the academic requirements for a person already practicing geology at the time this Chapter is enacted, provided application for license is made not later than one year after appointment of the initial Board and provided further that the applicant can provide evidence to satisfy the Board that he or she is competent to engage in the public practice of geology.

- (c) Successfully pass such examination established by the Board which shall be designed to demonstrate that the applicant has the necessary knowledge and requisite skill to exercise the responsibilities of the public practice of geology. The Board shall waive the examination for licensing as a geologist of an applicant who makes written application to the Board not later than one year after appointment of the initial Board, and who otherwise meets the qualification of this Chapter.

"§ 89E-10. Examinations.—(a) Examinations shall be formulated and conducted by the Board at such time and place as the Board shall determine, but shall be held at least annually.

- (b) The board shall determine the fee required for examination.

"§ 89E-11. Comity.—A person holding a license to engage in the practice of geology, on the basis of comparable licensing requirements issued to him by a proper authority by the State, territory, or possession of the United States or the District of Columbia, and who, in the opinion of the Board otherwise meets the requirements of this Chapter based upon verified evidence may, upon application, be licensed without further examination.

"§ 89E-12. Issuance, renewal and replacement of licenses.—(a) The Board shall issue a license upon payment of the license fee as fixed by the Board to any applicant who has satisfactorily met all the requirements of the Chapter as administered by the Board. Licenses shall show the full name of the registrant, shall give a serial number, and shall

be signed by the chairman and secretary of the Board under the seal of the Board. The issuance of a license by the Board shall be *prima facie* evidence that the person named therein is entitled to all the rights and privileges of a licensed geologist while the license remains in full force and effect.

(b) All licenses shall expire at such interval as may be determined by the Board, unless licenses are renewed. All applications for renewal shall be filed with the Board under rules and regulations it shall adopt and which renewal shall be accompanied by the renewal fee prescribed by the Board. A license which has expired for failure to renew may only be restored after application and payment of the prescribed restoration fee, provided the renewal applicant meets all other provisions of this Chapter.

(c) A new license to replace any license lost, destroyed or mutilated may be issued, subject to the rules of the Board and payment of a fee set by the Board.

"§ 89E-13. Seals; requirements.—Each geologist licensed hereunder, upon the issuance of a license, shall obtain from the secretary at a cost prescribed by the Board, a seal of the design authorized by the Board bearing the licensee's name and the legend 'Licensed Geologist—State of North Carolina'. All drawings, reports or other geologic papers or documents involving geologic work as defined in this Chapter which shall have been prepared or approved by a licensed geologist or a subordinate employee under his direction for the use of or for delivery to any person or for public record within this State shall be signed by him or her and impressed with the said seal or the seal of a nonresident practicing under the provisions of this Chapter, either of which shall indicate his or her responsibility therefor.

"§ 89E-14. Records.—(a) The Board shall keep a public record of its proceedings and a register of all applications for licensing.

(b) The register shall show:

- (1) The name, the age and the residency of each applicant;
- (2) The date of application;
- (3) The place of business of such applicant;
- (4) His or her education and other qualifications;
- (5) Whether or not an examination was required;
- (6) Whether the applicant was licensed;
- (7) Whether a license was granted;
- (8) The dates of the action by the Board; and
- (9) Such other information as may be deemed necessary by the Board. All official records of the Board or affidavits by the Secretary as to the content of such records shall be *prima facie* evidence of all matters required to be kept therein.

(c) The Board shall treat as confidential and not subject to disclosure except to the extent required by law or by rule or regulation of the Board individual test scores and applications and material relating thereto, including letters of reference relating to an application.

"§ 89E-15. Roster of licensed geologists.—The secretary shall keep a record and shall publish annually a roster showing the names and places of business and residence addresses of all licensed geologists. Copies of this roster shall be made available to the

public upon request and payment of reasonable fee for copying established by the Board.

"§ 89E-16. Code of professional conduct.—This Board shall cause to have prepared and shall adopt a code of professional conduct which shall be made known in writing to every licensee and applicant for licensing under this Chapter and which shall be published by the Board. Such publication shall constitute due notice to all licensees. The Board may revise and amend this code of ethics from time to time after due notice and opportunity for hearing to all licensed members and the public for comment before adoption of the revision or amendments.

"§ 89E-17. Complaints.—Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

"§ 89E-18. Prohibitions; unlawful acts.—After the effective date of this Chapter:

(a) It shall be unlawful for any person other than a licensed geologist or a subordinate under his direction to prepare any geologic plans, reports or documents in which the performance is related to the public welfare or safeguarding of life, health, property or the environment.

(b) It shall be unlawful for any person to publicly practice, or offer to publicly practice, geology in this State as defined in the provisions of this Chapter, or to use in connection with his or her name or otherwise assume, or advertise any title or description tending to convey the impression that he or she is a licensed geologist, unless such person has been duly licensed or exempted under the provisions of this Chapter.

(c) After one year following the effective date of this act, it shall be unlawful for anyone other than a geologist licensed under this Chapter to stamp or seal any plans, plats, reports or other documents with the seal or stamp of a licensed geologist, or to use in any manner the title 'Licensed Geologist' unless that person is licensed hereunder.

(d) It shall be unlawful for any person to affix his or her signature to or to stamp or seal any plans, plats, reports, or other documents after the licensing of the person named thereon has expired or has been suspended or revoked unless the license has been renewed or reissued.

"§ 89E-19. Disciplinary procedures.—The Board may, consistent with the provisions of Chapter 150A of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.

"§ 89E-20. Hearing procedures.—(a) The Board shall develop procedures for investigation, prehearing and hearing of disciplinary actions; such disciplinary actions

shall be conducted pursuant to the provisions of Article 3, Chapter 150A of the General Statutes.

(b) Any person aggrieved by a decision of the Board other than a decision in a disciplinary action may petition the Board for a hearing pursuant to the provisions of Article 3, Chapter 150A of the General Statutes.

(c) Judicial review of a final agency decision is available in the manner prescribed by Article 4, Chapter 150A of the General Statutes.

"§ 89E-21. Reissuance of license.—The Board, by a majority vote of the quorum, may reissue a license to any person whose license has been revoked when the Board finds upon written application by the applicant that there is good cause to justify such reissuance.

"§ 89E-22. Misdemeanor.—Any person who shall willfully practice publicly, or offer to practice publicly, geology for other natural or corporate persons in this State without being licensed in accordance with the provisions of this Chapter, or any person presenting or attempting to use as his own the license or the seal of another, or any person who shall give any false or forged evidence of any kind in obtaining a license, or any person who shall falsely impersonate any other licensee of like or different name, or any person who shall attempt to use an expired or revoked license or practice at any time during a period the Board has suspended or revoked the license, or any person who shall violate the provisions of this Chapter shall be guilty of a misdemeanor; upon conviction thereof, such person shall be punishable by a fine of not more than five hundred dollars (\$500.00), by imprisonment of not more than six months, or both such fine and imprisonment.

"§ 89E-23. Injunction.—As an additional remedy, the Board shall have the authority to proceed in a superior court appropriate jurisdiction to enjoin and restrain any natural or corporate person from violating the prohibitions of this Chapter. The Board shall not be required to post bond in connection with obtaining either provisional, preliminary or permanent injunctive relief pursuant to the North Carolina Rules of Civil Procedure or G.S. 1-485 et seq.

"§ 89E-24. Attorney General as legal advisor.—The Attorney General or any assistant or associate in the Department of Justice selected by him shall act as legal advisor to the Board."

Sec. 2. For the purposes of the appointment of the initial Board and of administrative preparation for the implementation of this Chapter, this act shall become effective July 1, 1983. For all other purposes, this act shall become effective January 1, 1985.

In the General Assembly read three times and ratified, this the 3rd day of July, 1984.