

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

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HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB1283 - 2/17/99

Introduced by: Representatives Michels and Peterson and Senator Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the licensing and
2 regulation of the practices of architecture, engineering, land surveying, photogrammetry,
3 landscape architecture, petroleum release assessment, and petroleum release remediation and
4 to the certification of environmental technical services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. Terms used in this Act mean:

7 (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation,
8 or reconstruction to a building which changes the use, occupancy classification, or
9 occupant load, or the exiting, structural, mechanical, or electrical systems of a
10 building as defined by the building code;

11 (2) "Architect," any person licensed in good standing and legally authorized to practice
12 architecture in this state;

13 (3) "Architectural intern," any person who has successfully completed an accredited
14 education program in architecture acceptable to the board and is enrolled in the intern
15 development program administered by the National Council of Architectural
16 Registration Boards;

- 1 (4) "Board," the Board of Technical Professions;
- 2 (5) "Building," any structure used or intended to support or shelter any occupancy;
- 3 (6) "Building or floor area," the sum of the areas of all of the floors of a building,
4 including basements, mezzanine, and intermediate tiers, and penthouses of headroom
5 height, measured from the exterior faces of exterior walls or from the center line of
6 the wall separating buildings. The building area does not include such features as pipe
7 trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof overhangs.
8 The floor area of enlargements shall be added to the existing building area. A fire or
9 area separation wall is not an exterior wall for the purposes of this definition;
- 10 (7) "Building official," the officer or other designated authority charged with the
11 administration and enforcement of the adopted code;
- 12 (8) "Business entity," any corporation, partnership, limited liability corporation, limited
13 liability partnership, or sole proprietorship that practices or offers to practice
14 engineering, architecture, land surveying, landscape architecture, petroleum release
15 assessment, or petroleum release remediation services to the public through its
16 licensed personnel who are either employees, officers, directors, partners, members,
17 managers, or owners and that have been issued a certificate of authorization by the
18 board;
- 19 (9) "Construction administration," the interpretation of drawings and specifications, the
20 establishment of standards of acceptable workmanship, and the site observation of
21 construction, by a licensed professional, for the purpose of determining whether the
22 work is in general accordance with the construction contract documents. Shop
23 drawing review and inspection of construction by contractors, subcontractors,
24 owner's agents, building officials, or other unlicensed professionals does not
25 constitute construction administration;

- 1 (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate,
2 mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of
3 less than one thousand one hundred gallons;
- 4 (11) "Design-build," a delivery approach in which a project team of design professionals
5 and builders perform design and construction services under contract with a client;
- 6 (12) "Engineer," a person who is qualified to practice engineering by reason of special
7 knowledge and use of the mathematical, physical, and engineering sciences and the
8 principles and methods of engineering analysis and design, acquired by engineering
9 education and engineering experience;
- 10 (13) "Engineering intern" or "engineer-in-training" or "EIT" or "EI," a person enrolled by
11 the board as an engineering intern and who has successfully passed the fundamentals
12 of engineering examination;
- 13 (14) "Enlargement," for the purpose of determining exemptions, is any addition to a
14 building which changes the use, occupancy classification, or occupant load, or the
15 exiting, structural, mechanical, or electrical systems of a building as defined by the
16 building code adopted by the board;
- 17 (15) "Land surveyor," a person licensed in good standing and legally authorized to practice
18 land surveying in this state;
- 19 (16) "Land surveying intern" or "land surveyor-in-training" or "LSIT" or "LSI," a person
20 enrolled by the board as a land surveying intern who has successfully passed the
21 fundamentals of land surveying examination;
- 22 (17) "Landscape architect," a person licensed in good standing and legally authorized to
23 practice landscape architecture in this state;
- 24 (18) "Landscape architectural intern," a person who has successfully completed an
25 accredited education program in landscape architecture adopted by the board;

- 1 (19) "License," a certificate indicating authority to practice and use titles within a
2 profession;
- 3 (20) "Licensee," a person or business entity whose license is in good standing;
- 4 (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel,
5 fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic
6 transmission fluid, waste oil, or alcohols that have been denatured with gasoline and
7 stored to be used as blended fuel-grade ethanol;
- 8 (22) "Petroleum release assessor," a person licensed in good standing and legally
9 authorized to practice petroleum release assessment in this state;
- 10 (23) "Petroleum release remediator," a person licensed in good standing and legally
11 authorized to practice petroleum release remediation in this state;
- 12 (24) "Professional engineer," a person licensed in good standing and legally authorized to
13 practice engineering in this state;
- 14 (25) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or disposing
15 of a reportable quantity of petroleum;
- 16 (26) "Remedial investigation," an action to identify the corrective action to be taken to
17 protect the public health, safety, and environment and to contain a release of
18 petroleum into the environment;
- 19 (27) "Responsible charge," the immediate and responsible direction by a licensed
20 professional who has exercised personal direction, guidance, and control over the
21 design, preparation of documents, construction administration, and other professional
22 services and has exercised professional judgment in all matters relating to those
23 services;
- 24 (28) "Retired licensee," a person who is retired and is no longer licensed to practice that
25 person's profession may use the appropriate honorific title or combination of titles of

1 Architect, Retired; Professional Engineer, Retired; Land Surveyor, Retired; or
2 Landscape Architect, Retired;

3 (29) "Site assessment," an action to identify the existence, source, nature, and extent of a
4 release and the extent of any danger to public health, safety, and welfare of the public
5 or environment;

6 (30) "Site observation," the visual observation of a construction project for general
7 compliance with submitted plans and specifications at significant stages and at project
8 completion.

9 Section 2. For the purposes of this Act, the term, practice of architecture, means the practice
10 or offering to practice any service in connection with the design, evaluation, construction,
11 enlargement, or alteration of a building or group of buildings and the space within and
12 surrounding such buildings, which have as their principal purpose human occupancy or
13 habitation. Such service includes consultation; evaluation; expert technical testimony; planning;
14 providing preliminary studies; designs; overall interior and exterior building design; preparation
15 of drawings, specifications, and related documents and other technical submissions; construction
16 administration services which include the review or observation of construction for the purpose
17 of determining whether the work is in general accordance with the design, drawings,
18 specifications, codes, and other technical submissions; and coordination of services furnished
19 by the architect, licensed professional engineers, and other consultants as they relate to
20 architectural work in connection with the design and construction of any private or public
21 building, building project, or integral part or parts of buildings, or any addition or alteration
22 thereto. The term also includes representation of clients in connection with the construction
23 administration services entered into between clients and contractor and others.

24 Section 3. For the purposes of this Act, the term, practice of engineering, means the practice
25 or offering to practice of any service or creative work, the adequate performance of which

1 requires engineering education, training, and experience in the application of special knowledge
2 of the mathematical, physical, and engineering sciences to such services or creative work. Such
3 service or work includes consultation; investigation; expert technical testimony; evaluation;
4 planning; design; and design coordination of engineering works and systems; planning the use
5 of land and water; land-use studies; teaching of advanced engineering subjects; performing
6 engineering studies; and the review or observation of construction for the purpose to determine
7 whether the work is in general accordance with drawings, specifications, and other technical
8 submissions. Any such service or work, either public or private, may be in connection with any
9 utilities, structures, buildings, machines, equipment, processes, work systems, projects, and
10 industrial or consumer products, or equipment of a mechanical, electrical, hydraulic, pneumatic,
11 or thermal nature, insofar as they involve safeguarding life, health, or property, and including
12 such other professional services as are necessary to the planning, progress, and completion of
13 any engineering services.

14 For the purposes of this section, the term, design coordination, includes the review and
15 coordination of those technical submissions prepared by others, including consulting engineers,
16 architects, landscape architects, land surveyors, and other professionals working under the
17 direction of the engineer. The term, engineering studies, includes all activities required to support
18 the sound conception, planning, design, construction, maintenance, and operation of engineered
19 projects, but excludes the surveying of real property for the establishment of land boundaries,
20 rights-of-way, easement exhibits relating to land boundaries, and the dependent or independent
21 surveys or resurveys of the public land survey system.

22 A person is construed to practice or offer to practice engineering if the person practices any
23 branch of the profession of engineering, if the person, by verbal claim, sign, advertisement,
24 letterhead, card, or in any other way represents himself or herself to be a professional engineer,
25 or if the person through the use of some other title implies that the person is a professional

1 engineer or that the person is licensed under these provisions, or if the person holds himself or
2 herself out as able to perform or does perform any engineering service or work or any other
3 service designated by the practitioner which is recognized as engineering.

4 Section 4. For the purposes of this Act, the term, practice of land surveying, means the
5 practice or offering to practice professional services such as consultation, investigation,
6 testimony evaluation, expert technical testimony, land-use studies, planning, mapping,
7 assembling, interpreting reliable scientific measurements and information relative to the location,
8 size, shape, or physical features of the earth, improvements on the earth, the space above the
9 earth, or any part of the earth, and utilization and development of these facts and interpretation
10 into an orderly survey map, plan, report, description, or project.

11 The practice of land surveying includes any of the following:

- 12 (1) Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or
13 boundary of any tract of land or any road, right-of-way, easement, alignment, or
14 elevation of any of the fixed works embraced within the practice of land surveying;
- 15 (2) Makes any survey for the subdivision of any tract of land;
- 16 (3) Determines, by the use of principles of land surveying, the position for any survey
17 monument or reference point; or sets, resets, or replaces any such monument or
18 reference point;
- 19 (4) Determines the configuration or contour of the earth's surface or the position of fixed
20 objects on the earth's surface by measuring lines and angles and applying the principles
21 of mathematics or photogrammetry;
- 22 (5) Geodetic surveying which includes surveying for determination of the size and shape
23 of the earth utilizing angular and linear measurements through spatially oriented
24 spherical geometry;
- 25 (6) Creates, prepares, or modifies electronic or computerized data, including land

1 formation systems and geographic information systems, relative to the performance
2 of the activities in subdivisions (1) to (5), inclusive, of this section.

3 Section 5. For the purposes of this Act, the term, practice of landscape architecture, means
4 the practice or offering to practice landscape architecture projects, including preparing
5 preliminary studies, providing land-use studies, developing design concepts, giving expert
6 technical testimony, planning for the relationships of physical improvements and intended uses
7 of the site, establishing form and aesthetic elements, analyzing and providing for life safety
8 requirements, developing those construction details on the site which are exclusive of any
9 building or structure and do not require the seal of an engineer or architect, preparing and
10 coordinating technical submissions, and conducting site observation of landscape architecture
11 projects.

12 Landscape architecture, for the purposes of landscape preservation, development, and
13 enhancement, includes: investigation, selection, and allocation of land and water resources for
14 appropriate use; feasibility studies; formulation of graphic and written criteria to govern the
15 planning and design of land construction programs; preparation, review, and analysis of master
16 plans for land use and development; production of overall site plans, landscape grading and
17 landscape drainage plans, irrigation plans, planting plans, and construction details; specifications;
18 cost estimates and reports for land development; collaboration in design of roads, bridges, and
19 structures with respect to the functional and aesthetic requirements of the areas on which they
20 are to be placed; negotiation and arrangement for execution of land area projects; field
21 observation and inspection of land area construction, restoration, and maintenance.

22 Section 6. For the purposes of this Act, the term, practice of petroleum release assessment,
23 means the practice of directing or supervising the field crew performing activities related to
24 assessments and environmental monitoring; developing assessment plans; directing the placement
25 of soil borings and determining where to collect samples for analytical data; determining the

1 location of representative soil samples for contaminant analysis; identifying and classifying soil
2 types and soil conditions; preparing soil boring logs or supervising preparation of logs; testing
3 and reporting on the physical and chemical properties of soils; identifying and reporting on
4 geological conditions; developing and implementing groundwater evaluation activities; directing
5 the placement of monitoring or observation wells; evaluating aquifer characteristics; formulating
6 input data for groundwater flow models; operating groundwater models and interpreting results;
7 directing the performance of pump tests or dye tests and other aquifer tests; interpreting the
8 results of aquifer testing; determining capture zones for groundwater removal systems;
9 evaluating and reporting on physical and chemical groundwater data; or offering to provide any
10 services pursuant to this section.

11 Section 7. For the purposes of this Act, the term, practice of petroleum release remediation,
12 means the practice of interpreting assessment results; formulating input data for contaminant
13 models; operating contaminant models and interpreting results; identifying the potential fate of
14 contaminants and environmental transport mechanisms; identifying the environmental risks and
15 health hazards of contaminants and contaminated media; directing or supervising the disposal of
16 contaminated soil and groundwater; evaluating and recommending remediation alternatives;
17 preparing a cost estimate or cost-effective analysis for remedial alternatives; developing soil and
18 groundwater remediation systems; preparing the plans and specifications for remedial systems;
19 directing or supervising the installation, operation, and maintenance of remedial systems;
20 overseeing and directing assessment and remedial activities; signing assessment plans, assessment
21 reports, and remedial action plans; or offering to provide any of the services pursuant to this
22 section. A petroleum release remediator may perform all the functions of a petroleum release
23 assessor.

24 Section 8. Any person practicing or offering to practice architecture, engineering, land
25 surveying, photogrammetry, landscape architecture, or petroleum release assessment or

1 remediation shall submit evidence of qualifications to the board and be licensed in accordance
2 with the provisions of this Act. No person may practice or offer to practice any of these
3 professions, or to use in connection with that person's name or otherwise assume, use, or
4 advertise any title or description that may falsely convey the impression that the person is duly
5 licensed under the provisions of this Act unless the person is so licensed.

6 Section 9. This chapter does not apply to:

- 7 (1) Any person engaged in military engineering while rendering service exclusively for any
8 of the armed forces of the United States or this state;
- 9 (2) Any person engaged in the practice of professional engineer or architecture in the
10 employ of the United States government but only while exclusively engaged as a
11 United States government employee on such government project or projects which
12 lie within federally-owned land;
- 13 (3) Any person engaged in the practice of professional engineering, architecture, or land
14 surveying in the employ of the state and any of its political subdivisions but only while
15 rendering service exclusively to such employer. Any building resulting from the
16 practice of professional engineering, architecture, or land surveying under this
17 subdivision is subject to the size limitation imposed under the exemptions in
18 subdivision (8) of this section;
- 19 (4) Any employee who prepares technical submissions or administers construction
20 contracts for a person or organization lawfully engaged in the practice of engineering,
21 architecture, or land surveying, if the employee is under the direct supervision of a
22 registered professional engineer, architect, or land surveyor;
- 23 (5) Any full-time employee of a corporation, partnership, firm, business entity, or public
24 utility while exclusively doing work for the corporation, partnership, firm, business
25 entity, or public utility, if the work performed is in connection with the property,

1 products, and services utilized by the employer and not for any corporation,
2 partnership, firm, or business entity practicing or offering to practice architectural,
3 engineering, or land surveying services to the public. The provisions of this
4 subdivision do not apply to any building or structure if the primary use is occupancy
5 by the public;

6 (6) Any person engaged in the preparation of plans and specifications for the erection,
7 enlargement, or alteration of any of the following buildings:

8 (a) Any dwelling for a single family, and any outbuilding in connection therewith,
9 such as a barn or private garage;

10 (b) Any two, three, or four family dwelling;

11 (c) Any five to sixteen family dwelling, inclusive, located in a governmental
12 subdivision of this state which provides a detailed building code review of
13 building projects by a building inspection department which is a Class A
14 member of the International Conference of Building Officials;

15 (d) Any farm or ranch building or accessory thereto except any building regularly
16 used for public purposes;

17 (e) Any temporary building or shed used exclusively for construction purposes, not
18 exceeding two stories in height, and not used for living quarters;

19 (7) Any person who prepares detailed or shop plans required to be furnished by a
20 contractor to a registered professional engineer or architect, and any construction
21 superintendent supervising the execution of work designed by an architect or
22 professional engineer registered in accordance with this Act;

23 (8) Any person engaged in the preparation of plans and specifications for the new
24 construction, the enlargement or the alteration of any of the following buildings:

25 (a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical

1 office, nursing facility, assisted living facility, jail, retirement home, or
2 mortuary, if the gross square footage of the new construction, the enlargement,
3 or the alteration is four thousand square feet or less;

4 (b) Any building occupied as an auditorium, church, school, or theater if the gross
5 square footage of the new construction, the enlargement, or the alteration is
6 five thousand square feet or less;

7 (c) Any building occupied as a bowling alley, office, shopping center, bank, fire
8 station, service station, or store if the gross square footage of the new
9 construction, the enlargement, or the alteration is seven thousand square feet
10 of less;

11 (d) Any building occupied as an industrial plant or public garage if the gross square
12 footage of the new construction, the enlargement, or the alteration is eleven
13 thousand square feet or less;

14 (e) Any building occupied as a warehouse if the gross square footage of the new
15 construction, the enlargement, or the alteration is twenty thousand square feet
16 or less;

17 (f) Any building with an occupancy other than those listed in subsection (a) to (e),
18 inclusive, of this subdivision if the gross square footage of the new
19 construction, the enlargement, or the alteration is four thousand square feet of
20 less;

21 (g) Any preengineered or predesigned building, or any preengineered or
22 predesigned building with a predesigned system, designed for the intended use
23 of that building, including building structure, electrical, plumbing, and
24 mechanical systems, if the buildings and systems are supplied directly, or
25 indirectly, by a company engaged in the business of designing and supply such

1 buildings and systems and if the company has in it employ one or more
2 engineers or architects licensed in South Dakota, who prepare all designs for
3 such buildings and systems.

4 No person exempted may use the title of professional engineer, architect, or land surveyor,
5 or any other word, words, letters, or signs in connection with the person's name that may falsely
6 convey the impression that the person is a licensed professional engineer, architect, or land
7 surveyor.

8 Section 10. For the purposes of subdivision (8) of section 9 of this Act, if a building consists
9 of more than one type of occupancy, each portion of the building shall conform to the limitations
10 established by that subdivision for each type of occupancy. The area of the building shall be such
11 that the sum of the ratios of the actual area for each separate occupancy divided by the total
12 allowable area allowed by that subdivision for each separate occupancy does not exceed one.

13 Section 11. This Act does not prohibit a contractor from offering to provide or from
14 providing design-build services if the architectural and engineering services offered or provided
15 in connection with the design-build services are rendered by an architect or professional engineer
16 licensed in accordance with this Act.

17 Section 12. This Act does not apply to providers of services such as drilling or monitoring
18 well installation, analytical testing, monitoring, electrical, plumbing, excavation, or construction
19 if the service provided is part of a site assessment, remedial investigation, or corrective action
20 to remediate water or soil contaminated from a petroleum release performed or executed by an
21 authorized petroleum release business entity with a certificate of authorization.

22 Section 13. An architect may engage in the practice of professional engineering, or a
23 professional engineer may engage in the practice of architecture, but only to the extent that such
24 practice is incidental or of minor importance to a project or service being legally performed under
25 this Act.

1 Section 14. The Board of Technical Professions is hereby created to administer the
2 provisions of this Act. Each member of the board shall receive a certificate of appointment from
3 the Governor, each member and shall file with the secretary of state a written oath for the faithful
4 discharge of the member's official duties. The board shall consist of seven members to be
5 appointed by the Governor for a term of four years. In implementing the four-year terms, the
6 Governor shall vary the terms to enable the board to have no more than two terms expire in any
7 one year. The board shall be composed of two professional engineers, two architects, two land
8 surveyors, and one member from the public. Members may be reappointed to succeed
9 themselves. A member shall hold over the expiration of a term until a successor is duly appointed
10 and qualified.

11 Section 15. Each member of the board shall be a citizen of the United States and a resident
12 of this state. The public member may not be or have been engaged in any activity subject to
13 licensure under this Act. The members may not all be of the same political party.

14 Section 16. The members of the board, or any committee of the board, and the executive
15 director of the board are immune from liability in damages, and no cause of action for damages
16 may arise against them for any act or proceeding undertaken or performed by them within their
17 official capacity if they acted in good faith. These persons, while acting upon disciplinary matters
18 and in carrying out civil remedies, are deemed to be acting as officers of the state. The attorney
19 general shall represent and appear for them in any action or proceeding brought by or against
20 them because of such acts.

21 Section 17. The Governor may remove any member of the board for misconduct, incapacity,
22 or neglect of duty. Any member appointed to fill a vacancy arising from other than the natural
23 expiration of a term shall serve for only the unexpired portion of the term.

24 Section 18. The board shall annually elect from its members a chair, a vice chair, and a
25 secretary. The board shall hold at least six regular meetings in each year. Special meetings may

1 be called and notice of all meetings shall be given in such manner as the public meetings laws
2 may provide. At all meetings, a majority of the board constitutes a quorum. The board and its
3 employees may be included in the state blanket bond purchased pursuant to § 3-5-5.1.

4 Section 19. The executive director of the board shall receive and account for all money
5 derived under the provisions of this Act. All money shall be used by the board to administer the
6 duties set forth under this Act. The board may determine the manner of disbursing the money and
7 purposes for which disbursements shall be made. Warrants for the payment of disbursements
8 shall be issued by the state auditor and paid by the state treasurer upon presentation of itemized
9 vouchers approved by the board. The total of the warrants may not exceed the total balance.

10 Section 20. The board may employ counsel and other necessary assistance to aid in the
11 enforcement of this Act or for the assistance of any proceeding commenced by the attorney
12 general or by a state's attorney, the compensation and expenses of whom shall be paid from the
13 technical professions fund.

14 Section 21. The board shall employ an executive director who shall work under the direction
15 of the board and shall be delegated the duties necessary to conduct board business. The board
16 may employ staff and rent offices as necessary for the proper performance of its duties as
17 prescribed in this Act. The compensation and expenses shall be paid from the technical
18 professions fund.

19 Section 22. The board shall, pursuant to chapter 1-26, promulgate rules which may be
20 reasonably necessary for the performance of its duties, the regulation of proceedings before it,
21 and the licensure of the professions it regulates. The existing rules promulgated under the
22 previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules,
23 pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors,
24 photogrammetrists, landscape architects, and petroleum release assessors and remediators in the
25 following areas:

- 1 (1) Forms such as applications, renewals, licenses or certificates, receipts, and wallet
2 cards for applicants, licensed professionals, and business entities;
- 3 (2) Fees for applications, examinations, renewals, late penalties, lists and labels of
4 licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to
5 collect fees for examinations, waiver of fees;
- 6 (3) Criteria for types of education degrees, approval of accredited programs, intern
7 programs, type of experience, length of experience, national and state specific
8 examinations, use of computer examinations, criteria from other countries, procedure
9 to evaluate foreign degrees, eligibility of applicants, dual licenses;
- 10 (4) Continuing professional education and development content, hours, carryovers, and
11 requirements;
- 12 (5) How, when, and where to seal plans and documents; type of seal; required services
13 to be provided; and criteria to define complete plans, minimum standards of practice,
14 and guidelines;
- 15 (6) Description of and criteria for construction administration, including a designation of
16 who is to perform construction administration and criteria for a prime professional or
17 a coordinating professional;
- 18 (7) Requirements for compliance with local building code;
- 19 (8) The adoption of a code of professional conduct;
- 20 (9) Procedures for disciplinary proceedings; and
- 21 (10) Procedures for contested cases pursuant to chapter 1-26.

22 Section 23. The Board of Technical Professions shall continue within the Department of
23 Commerce and Regulation and shall retain all the prescribed functions, including administrative
24 functions, of the previous State Commission of Engineering, Architectural and Land Surveying
25 Examiners.

1 Section 24. The board shall maintain the following record and report policy:

2 (1) A record of its proceedings and all current applications of licensure shall be retained;

3 (2) The record of the board shall be prima facie evidence of the proceedings of the board,
4 and a transcript thereof, duly certified by the executive director of the board, shall be
5 admissible as evidence with the same force and effect as if the original were produced;
6 and

7 (3) The following are of a confidential nature and are not public records: examination
8 scores, examination material, examination problem solutions, letters of inquiry and
9 references concerning applicants, board inquiry forms concerning applicants and
10 licensees, and investigation files if any investigation is still pending.

11 Section 25. Any applicant for enrollment as an engineering intern shall provide evidence
12 satisfactory to the board that the applicant has graduated from or is admitted in an accredited
13 engineering curriculum and has passed an examination. The examination may be taken during the
14 applicant's senior year of study or at such time as may be determined by the board. The board
15 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and
16 examination criteria.

17 Section 26. Any applicant for licensure as a professional engineer shall provide the following
18 evidence satisfactory to the board:

19 (1) Graduation from an accredited engineering college, university, or technical program;

20 (2) Completion of the minimum number of years of diversified engineering experience
21 under the supervision of a licensed professional engineer; and

22 (3) Successful completion of examinations.

23 A person who has begun the requirement for licensure without minimum education and has
24 qualifying experience as of July 1, 1999, shall apply to the board before July 1, 2004, for
25 approval to take the examination under the qualifications that previously existed under § 36-18-

1 17.4. The board shall promulgate rules, pursuant to chapter 1-26, to establish education,
2 experience, and examination criteria.

3 Section 27. Any applicant for licensure as an architect shall provide the following evidence
4 satisfactory to the board:

- 5 (1) Graduation with an accredited professional degree in architecture;
- 6 (2) Completion of the national architectural intern development program; and
- 7 (3) Successful completion of examinations.

8 The board may qualify an applicant who holds a certification issued by the National Council
9 of Architectural Registration Boards in lieu of the qualifications listed in this section. The board
10 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and
11 examination criteria.

12 Section 28. Any applicant for enrollment as a land surveying intern shall provide evidence
13 satisfactory to the board that the applicant has graduated from an accredited surveying or
14 engineering curriculum, or substantially similar experience acceptable to the board and has
15 passed an examination. The examination may be taken during the applicant's senior year of study
16 or at such time as may be determined by the board. The board shall promulgate rules pursuant
17 to chapter 1-26 to establish education, experience, and examination criteria.

18 Section 29. Any applicant for licensure as a land surveyor shall provide the following
19 evidence satisfactory to the board:

- 20 (1) Graduation from an accredited engineering or land surveying college, university, or
21 technical program with a minimum of twenty credit hours of surveying curriculum,
22 or substituted experience, in whole or part, acceptable to the board;
- 23 (2) Completion of the minimum number of years of diversified surveying experience
24 under the supervision of a licensed land surveyor; and
- 25 (3) Successful completion of examinations.

1 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,
2 and examination criteria.

3 Section 30. Any applicant for licensure as a landscape architect shall provide the following
4 evidence satisfactory to the board:

- 5 (1) Graduation from an accredited program of landscape architecture;
- 6 (2) Completion of a council record from the Council of Landscape Architectural
7 Registration Boards; and
- 8 (3) Successful completion of examinations.

9 The board may qualify an applicant who holds a certification issued by the Council of
10 Landscape Architectural Registration Boards in lieu of the qualifications listed in this section.

11 The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience,
12 and examination criteria.

13 Section 31. Any applicant for licensure as a petroleum release assessor or remediator shall
14 provide the following evidence satisfactory to the board:

- 15 (1) Completion of education and experience requirements; and
- 16 (2) Successful completion of examinations.

17 The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,
18 and examination criteria.

19 Section 32. The board may require the applicant to appear for an oral interview if there are
20 questions as to the depth, extent, and quality of any experience. Failure to supply additional
21 evidence or information within thirty days from the date of a written request from the board, or
22 failure to appear before the board if an appearance is requested, may be considered cause for
23 disciplinary action or disapproval of an application. The board shall interpret qualifying
24 experience and education according to the following:

- 25 (1) Qualifying experience is diversified, general practice experience of a progressive

1 degree of difficulty, magnitude, and responsibility under proper professional guidance
2 and supervision of licensed persons;

3 (2) For partially completed work in accredited or approved degree granting curriculums,
4 education credit of three-fourths of a year may be allowed for each thirty semester
5 hours of study. For work in vocational or trade schools, education credit of one-half
6 of a year may be allowed for each thirty semester hours of study;

7 (3) Education from foreign schools shall be evaluated with accredited programs in the
8 United States, and experience in foreign employment under licensed persons shall be
9 evaluated by the board;

10 (4) Qualifying experience under proper professional guidance and supervision of licensed
11 persons gained in work experience with governmental agencies, the military,
12 construction, sales, and industry requiring the application of skills normally taught in
13 the schools of engineering, science, architecture, or land surveying may be evaluated
14 by the board. The board shall give credit for experience as warranted;

15 (5) Teaching at the junior year level and above of engineering, science, architectural,
16 landscape architectural, and land surveying courses in accredited or approved
17 curriculums is acceptable experience for a maximum of one year.

18 Section 33. The board shall admit to examination any candidate who pays a fee established
19 by the board and submits an application with evidence satisfactory to the board that the applicant
20 satisfies the necessary education and experience requirements. The board may require an
21 applicant for licensure or a current licensee to take an examination as it deems necessary to
22 determine that person's professional minimum competency. Upon approval of examination
23 applications, examination fees may be paid by the applicant directly to a national vendor or third
24 party. The board may hold membership in and be represented at national councils or
25 organizations of professional practices licensed under this Act and may pay the appropriate

1 membership fees. The board may allow proctoring of examinations for approved candidates at
2 out-of-state or overseas sites by administrators of national council member boards. The board
3 may accept candidates to be proctored in this state from other national council member boards.
4 A take-home questionnaire based on statutes and rules and related to professionalism and ethics
5 may also be required. The board shall promulgate rules, pursuant to chapter 1-26, to establish
6 application, examination, and proctor fees for all examinations.

7 Section 34. The board shall notify each applicant of the results of the examination and those
8 entitled to licensure or enrollment. If an applicant fails the examination and the applicant's
9 application is still current, subsequent reexaminations may be granted upon payment of a fee to
10 be fixed by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish
11 reexamination fees for all licensure and enrollment applicants.

12 Section 35. The board may give comity consideration to any person who holds a current and
13 valid license issued to that person for active practice by the proper authority in any state or
14 territory of the United States, the District of Columbia, or any foreign country, based on
15 requirements that do not conflict with the provisions of this Act and were of a standard not lower
16 than that specified in the applicable licensure act in effect in this state at the time such license was
17 issued. An applicant may be required to take examinations as the board deems necessary to
18 determine the applicant's competency. A comity applicant for landscape architecture shall hold
19 a current and valid certification from the Council of Landscape Architectural Registration Boards
20 to be eligible for comity licensure. The board shall promulgate rules, pursuant to chapter 1-26,
21 relating to the application fee for licensure by comity.

22 Section 36. The board shall grant a license to any applicant as a professional engineer,
23 architect, land surveyor, photogrammetrist, landscape architect, petroleum release assessor or
24 remediator, or for any two or more of these titles who has met the requirements of this Act.

25 Section 37. The license shall be displayed in a conspicuous place in the licensee's principal

1 office, place of business, or place of employment within the state. A new license to replace a lost,
2 destroyed, or mutilated license shall be issued upon payment of a fee established by the board
3 pursuant to chapter 1-26.

4 Section 38. The recipient of a license issued under this Act may practice engineering,
5 architecture, land surveying, photogrammetry, landscape architecture, petroleum release
6 assessment, or petroleum release remediation and use the appropriate title professional engineer,
7 architect, land surveyor, photogrammetrist, landscape architect, petroleum release assessor, or
8 petroleum release remediator. A licensee may use a title either with or without prefixing the
9 word, licensed or registered. No licensee may practice a profession or use a title unless the
10 license specifically permits such practice and usage. An unrevoked and unexpired license issued
11 as provided in this Act is presumptive evidence in all courts and places that the person named
12 is legally licensed.

13 Section 39. A license expires two years after the date of issuance and becomes invalid on that
14 date unless renewed by that date. Any professional engineer, architect, land surveyor,
15 photogrammetrist, landscape architect, or petroleum release assessor or remediator licensed
16 under this Act who desires to continue to practice or offer to practice the licensee's profession
17 shall:

- 18 (1) Pay the renewal fee established by the board in rules promulgated pursuant to chapter
19 1-26; and
- 20 (2) Successfully complete all continuing professional development requirements
21 established by the board or make a showing of good cause why the licensee was
22 unable to comply with such requirements.

23 The board shall promulgate rules, pursuant to chapter 1-26, to establish continuing
24 professional education and development criteria.

25 Section 40. The board may decline to renew a license if an applicant has not completed

1 continuing professional development requirements. A license for a two-year period shall be
2 issued upon completion of the requirements. The board may provide, by rules promulgated
3 pursuant to chapter 1-26, for the inactive or retired status of a person who has been duly licensed
4 under this Act and who chooses to relinquish or not to renew a license.

5 Section 41. The board shall notify by mail any person licensed under this Act of the date of
6 expiration of the license, the requirement of professional development hours, and the amount of
7 the fee required for renewal. The notice shall be mailed to the last known address of the licensee
8 at least one month in advance of the date of expiration of the license. A licensee shall notify the
9 board of any address changes.

10 Section 42. A person may reinstate an expired license or request inactive status within three
11 years after a license's date of expiration if the person is otherwise qualified. The fee for the
12 reinstatement of the license or requesting inactive status after it has expired shall be increased
13 by an amount to be determined by the board in rules promulgated pursuant to chapter 1-26. A
14 person requesting reinstatement of an expired or inactive license shall complete the requirements
15 for continuing professional development and any reexaminations and pay any penalty fees. If a
16 person fails to reinstate an expired license or request inactive status within the three years after
17 the date of expiration, all relevant files shall be deleted. A person requesting licensure after three
18 years shall submit an application for a new license.

19 Section 43. Any licensed person may request that the person's license be placed on inactive
20 or retired status. A fee to place files on inactive or retired status shall be determined by the board
21 in rules promulgated pursuant to chapter 1-26. Failure to render any fees required for inactive
22 or retired status shall result in the automatic termination of inactive or retired status. The request
23 for files to be placed on inactive or retired status may be denied by the board. No person may
24 practice or offer to practice while that person's files are inactive or retired.

25 Section 44. Any licensed professional engineer, architect, land surveyor, photogrammetrist,

1 and landscape architect shall procure and use an appropriate seal. The seal shall contain the
2 following information:

- 3 (1) The name, South Dakota;
- 4 (2) Licensee's name;
- 5 (3) License number; and
- 6 (4) The appropriate title or combination of titles: Professional Engineer, Architect, Land
7 Surveyor, Landscape Architect.

8 The seal shall have an outer circle with a two-inch diameter and an inner circle with a one
9 and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered.
10 The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile
11 found acceptable to the board. The licensee's original written signature and the date shall be
12 adjacent to or across the seal. Computer-generated or other facsimile signatures and dates may
13 not be used. Petroleum release assessors and remediators, or interns, may not obtain or use any
14 seal.

15 Section 45. The application of the licensee's seal and signature and the date constitutes
16 certification that the work on which it was applied was done by the licensee or under the
17 licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that
18 can be legibly reproduced on the following:

- 19 (1) All originals, copies, tracings, or other reproducibles of all final drawings,
20 specifications, reports, plats, plans, land surveys, design information, and calculations
21 prepared by the licensee or under the licensee's responsible charge when presented
22 to a client or any public or governmental agency. A licensee may not review or check
23 technical submissions of another licensed professional or unlicensed person and seal
24 the documents as the licensee's own work;
- 25 (2) Preliminary work shall contain a note that the submittal is Not for Construction,

1 Preliminary, or other such explanation that it is not final;

2 (3) In the case of multiple seals, the title or index sheet may be sealed, signed, and dated
3 by all involved. In addition, each sheet shall be sealed, signed, and dated by the
4 licensee or licensees responsible for that sheet;

5 (4) Drawings that are transmitted electronically to a client or governmental agency shall
6 have the computer-generated seal removed from the original file. The electronic media
7 shall have the following inserted in lieu of the seal, signature, and date: This document
8 originally issued and sealed by (name of licensee/sealer), (title), (license number), on
9 (date of sealing). This media should not be considered a certified document.

10 Section 46. No person other than an architect or professional engineer may provide
11 architectural and engineering services which include construction administration services on
12 projects that are not exempt pursuant to sections 2 and 3 of this Act. The architect or
13 professional engineer of record, or another designated architect or professional engineer without
14 conflict of interest, shall provide a written report of observed deficiencies or variations from the
15 submitted plans and specifications to the building official, owner, and builder before project
16 completion. The board may promulgate rules pursuant to chapter 1-26 to establish construction
17 administration services criteria including coordinating and prime professional criteria.

18 Section 47. Any office physically located and maintained in this state to offer engineering,
19 architectural, land surveying, photogrammetry, landscape architectural, petroleum release
20 assessment, or petroleum release remediation services shall have an appropriately licensed person
21 who is regularly employed in that office and who has responsible charge and direct supervision
22 and control of all professional services. A licensee who renders occasional, part-time, or
23 consulting services to or for a firm or office may not be designated as the person in responsible
24 charge for the professional activities of the firm or office unless a schedule is posted at the office
25 for the public's knowledge and filed with and approved by the board stating when the licensee

1 is physically in the office.

2 Section 48. Any business entity that desires to practice engineering, architecture, land
3 surveying, photogrammetry, landscape architecture, or petroleum release assessment or
4 remediation in this state shall register with the board by making application for a certificate of
5 authorization. A business entity is responsible for the conduct or acts of its agents, employees,
6 officers, partners, members, or managers in respect to any engineering, architecture, land
7 surveying, landscape architecture, petroleum release assessment, or petroleum release
8 remediation services performed or to be executed in this state. No person is relieved of the
9 responsibility for that person's conduct or acts performed by reason of that person's employment
10 by or relationship with a business entity. A licensee who renders occasional, part-time, or
11 consulting services to or for a business entity may not be designated as the person in responsible
12 charge for the professional activities of the business entity.

13 Section 49. A business entity desiring a certificate of authorization or renewal shall file a
14 written application with the board which shall contain the following:

- 15 (1) Names and addresses of the sole proprietorship and all general and limited partners,
16 officers, and directors of any business entity;
- 17 (2) Names and addresses of all general and limited partners, officers, directors, and
18 employees or sole proprietors of such business entity who are duly licensed to practice
19 engineering, architecture, land surveying, photogrammetry, landscape architecture,
20 petroleum release assessment, or petroleum release remediation in this state and who
21 are or will be in responsible charge of any professional services in this state by the
22 business entity;
- 23 (3) A statement by a partner, officer, or owner that the business entity will not permit the
24 performance of any professional service, as defined in this Act, by any person of the
25 business entity unless the person is licensed under this Act; and

1 (4) All other information the board may deem necessary as promulgated by rule pursuant
2 to chapter 1-26.

3 Section 50. The board shall issue a certificate of authorization or a renewal to a business
4 entity upon receipt of an application for a certificate of authorization and a fee as set by the
5 board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts
6 exist which would entitle the board to suspend or revoke the certificate if issued to the applicant.
7 The certificate of authorization is not transferable.

8 Section 51. The business entity shall file with the board a written report of any change in the
9 information submitted on the application that occurs during the term of the certificate of
10 authorization. The business entity shall report the change within thirty days after the effective
11 date of the change. Failure to provide the report constitutes grounds for the board to suspend
12 or revoke the certificate of authorization.

13 Section 52. The provisions with respect to issuance, expiration, renewal, and reissuance of
14 the certificate of licensure of persons contained in this Act apply to certificates of authorization
15 issued to business entities under the provisions of this Act. A business entity is subject to
16 disciplinary proceedings and penalties, and certificates of authorization are subject to suspension
17 or revocation for cause, in the same manner and to the same extent as is provided with respect
18 to individuals and their certificates of licensure in this Act. The terms, licensee and certificate
19 of licensure, as used in this Act, apply to any business entity holding a certificate of authorization
20 issued under this Act and to such certificate of authorization.

21 Section 53. A violation of any of the provisions of this Act by a business entity is not grounds
22 for the revocation, suspension, or refusal to renew a license of an individual employee of the
23 business entity unless the board finds that the employee was a party to the violation.

24 Section 54. The board shall inquire into the identity of any person alleged to be engaging in
25 the unlawful practice of engineering, architecture, land surveying, photogrammetry, landscape

1 architecture, petroleum release assessment, or petroleum release remediation. The board shall
2 investigate alleged violations of the provisions of this Act, and report to the proper state's
3 attorney or the attorney general any person or case that in the judgment of the board warrants
4 prosecution. The attorney general or the several state's attorneys may prosecute violations of
5 this Act in the name or on behalf of the board.

6 Section 55. When investigating alleged violations, the board may administer oaths to
7 witnesses appearing before the board, subpoena licensees as witnesses and compel their
8 attendance, and require the submittal of plans, specifications, books, records, papers, and other
9 documents. If a licensee refuses to obey any subpoena, or refuses to testify or produce any
10 materials required, the board may take disciplinary action or present its petition to the court of
11 the county in which the licensee resides, and the court may enter a suitable order compelling
12 compliance with the provisions of this Act and imposing such other terms and conditions as the
13 court may deem suitable. The board may also summon nonlicensees as witnesses and request
14 their attendance, and request the submittal of plans, specifications, books, records, papers, and
15 other documents. If a nonlicensee refuses to cooperate, testify, or produce any materials
16 requested, the board may petition the court of the county in which the nonlicensee resides, and
17 the court may enter a suitable order compelling compliance with the provisions of this Act and
18 imposing such other terms and conditions as the court may deem suitable.

19 Section 56. The board may take action without proof of actual injury on the following
20 violations:

- 21 (1) Has violated any statute, rule, or order that the board has issued or is empowered to
22 enforce;
- 23 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether
24 or not the conduct or acts relate to professional practice;
- 25 (3) Has engaged in conduct or acts that are grossly negligent, incompetent, reckless, or

- 1 otherwise in violation of established standards related to that person's professional
2 practice;
- 3 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether
4 or not the person admits guilt, or has been shown to have engaged in acts or practices
5 tending to show that the applicant or licensee is incompetent or has engaged in
6 conduct reflecting adversely on the person's ability or fitness to engage in that
7 person's professional practice. A copy of the record of conviction or plea of guilty or
8 nolo contendere is conclusive evidence;
- 9 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in
10 passing all or a portion of the examination;
- 11 (6) Has had that person's professional license, registration, certificate, right to
12 examination, or other similar rights to practice revoked, suspended, canceled, given
13 probation, limited, censured, reprimanded, or not renewed for cause in any state or
14 territory of the United States, the District of Columbia, or in any foreign country;
- 15 (7) Failed to meet any requirement for issuance or renewal of the person's license or
16 certificate;
- 17 (8) Has used or attempted to use as that person's own the certificate or seal of another;
- 18 (9) Has used or attempted to use an expired, suspended, or revoked license;
- 19 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or
20 other technical submission or document not prepared by that person or under that
21 person's responsible charge;
- 22 (11) Aided or assisted another person in violating any provision of this Act or the rules
23 pertaining to this Act;
- 24 (12) Failed to promptly and appropriately provide information requested by the board as
25 a result of a formal or informal complaint to the board which would indicate a

- 1 violation of this Act;
- 2 (13) Has provided false testimony or information to the board;
- 3 (14) Failed to report known violations of this Act;
- 4 (15) Has engaged in the use of untruthful or improbable statements in advertisements;
- 5 (16) Failed to complete continuing professional development requirements set by the
- 6 board;
- 7 (17) Made misleading or untruthful representations in advertisements or published
- 8 materials;
- 9 (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- 10 (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- 11 (20) Has committed an act, engaged in conduct, or committed practices that may result in
- 12 an immediate threat to the public; or
- 13 (21) Has provided professional services in technical areas not covered by that person's
- 14 license or competency.

15 Section 57. If the board determines that a person or business entity is in violation of this Act,
16 the board may take the following actions:

- 17 (1) Deny an application;
- 18 (2) Suspend, temporarily suspend, revoke, or refuse to renew an enrollment or license;
- 19 (3) Place on probation, condition, or limit a licensee's practice;
- 20 (4) Reimburse the board for expenses, fine, censure, or reprimand a person or business
- 21 entity;
- 22 (5) Refuse to permit a person to sit for examination or refuse to release a person's
- 23 examination scores;
- 24 (6) Require a person to sit for a reexamination; and
- 25 (7) Pursue legal actions against a person or business entity that is not licensed to offer or

1 render practices covered by this Act.

2 Section 58. In lieu of or in addition to any disciplinary remedy provided in section 57 of this
3 Act or civil remedy provided in section 61 of this Act, the board may require, as a condition of
4 continued licensure, termination of suspension, reinstatement of license, examination, or release
5 of examination grades, that the person:

6 (1) Submit to a qualifying review of the person's ability, skills, or quality of work. The
7 person may be required to attend remedial education courses; and

8 (2) Complete to the satisfaction of the board continuing professional education courses
9 as the board may specify by rule or order, pursuant to chapter 1-26.

10 Section 59. Proceedings for the revocation or suspension of a license shall be conducted
11 pursuant to chapter 1-26 and rules promulgated pursuant to this Act.

12 Section 60. The findings and actions of the board on disciplinary matters shall be subject to
13 appeal as provided by chapter 1-26 and rules promulgated pursuant to this Act.

14 Section 61. Any person who has violated any provision of this Act or any rule promulgated
15 pursuant to this Act, is subject to the following penalties:

16 (1) Administrative fine:

17 (a) Licensed person: Any person licensed by the board who violates any provision
18 of this Act is liable for an administrative fine not to exceed two thousand
19 dollars for each offense;

20 (b) Licensed business entity: Any business entity permitted to practice by the board
21 that violates any provision of this Act is liable for an administrative fine not to
22 exceed five thousand dollars for each offense.

23 An administrative fine not paid within sixty days from the date of the order imposing
24 the fine may be enforced by an action in the appropriate county circuit court. Any
25 person aggrieved by an order under this subdivision may make an appeal pursuant to

1 chapter 1-26;

2 (2) Injunction: If the board deems it necessary for the public safety, it may bring an action
3 in the name of the state in the circuit court in any county in which jurisdiction is
4 proper to enjoin the act, practice, or violation and to enforce compliance with this Act
5 or any rule promulgated pursuant to this Act. Upon showing that a person has
6 engaged in an otherwise unauthorized act or practice, a permanent or temporary
7 injunction, or restraining order, or other appropriate relief shall be obtained against
8 the person to prohibit the continuation of the unauthorized act or practice. If a person
9 has caused a structure to be designed, constructed, or built by engaging in an
10 unauthorized act or practice, a permanent or temporary injunction or restraining
11 order, or other appropriate relief, shall be obtained against the project prohibiting the
12 use and occupancy of any structure. For purposes of injunctive relief under this
13 subdivision, irreparable harm exists if the board shows that a person has engaged in
14 an act or practice constituting the unauthorized use of a title, words, figures, or sign
15 implying licensure, or a violation of a statute, rule, or order that the board has issued
16 or is empowered to enforce;

17 (3) Cease and desist order: The board may issue and have served upon a person an order
18 requiring the person to cease and desist from any unauthorized practice or act which
19 is in violation of this Act or any rule promulgated pursuant to this Act. The cease and
20 desist order shall give reasonable notice of the rights of the person to request a
21 hearing pursuant to chapter 1-26 and shall state the reasons for the entry of the order.

22 Section 62. Service of the order is effective if the order is served on the person or counsel
23 of record personally or by certified mail to the most recent address provided to the board for the
24 person or counsel of record. Unless otherwise agreed by the board and the person requesting the
25 hearing, the hearing shall be held no later than ninety days after the request for the hearing is

1 received by the board.

2 Section 63. The board or administrative law judge shall issue a report within thirty days of
3 the close of the contested case hearing record. Within thirty days after the report and any
4 exceptions to it, the board shall issue a further order vacating, modifying, or making permanent
5 the cease and desist orders as the facts require.

6 Section 64. If no hearing is requested within the thirty days of service of the order, the order
7 becomes final and remains in effect until it is modified or vacated by the board. If the person to
8 whom a cease and desist order is issued fails to appear at the hearing after being duly notified,
9 the person is in default and the proceeding may be determined against that person upon
10 consideration of the cease and desist order, the allegations of which may be considered to be
11 true. Action taken pursuant to this section does not relieve a person from criminal prosecution
12 by a competent authority or from disciplinary action by the board with respect to the person's
13 license, registration, certification, application for examination, or renewal.

14 Section 65. No person may:

15 (1) Practice, or offer to practice, the professions of engineering, architecture, land
16 surveying, photogrammetry, landscape architecture, petroleum release assessment, or
17 petroleum release remediation in this state without being licensed or exempt in
18 accordance with the provisions of this Act;

19 (2) Use or employ the title of architect, landscape architect, land surveyor,
20 photogrammetrist, professional engineer, petroleum release assessor, or petroleum
21 release remediator with or without qualifying adjectives without being licensed in
22 accordance with the provisions of this Act;

23 (3) Use any other words, letters, or figures indicating or intending to imply that the
24 person is a professional engineer, architect, land surveyor, photogrammetrist,
25 landscape architect, petroleum release assessor, or petroleum release remediator

1 without being licensed in accordance with the provision of this Act;

2 (4) Present or attempt to use the certificate of licensure or seal of another, or affix a
3 professional engineer's, architect's, land surveyor's, photogrammetrist's, or landscape
4 architect's seal on any plans, specifications, drawings, or other technical submittals
5 which have not been prepared by that person or under that person's responsible
6 charge and direct personal supervision;

7 (5) Present any false or forged evidence of any kind to the board in obtaining a certificate
8 of licensure;

9 (6) Falsely impersonate any other licensee;

10 (7) Attempt to use an expired, suspended, or revoked license;

11 (8) Knowingly allow person's name or seal to be used upon plans or work not actually
12 performed by that person or under that person's responsible charge and direct
13 supervision; or

14 (9) By act of commission or omission, violates any of the provisions of this Act.

15 A violation of this section is a Class 1 misdemeanor for the first offense and a Class 6 felony
16 for any second or subsequent offense.

17 Section 66. No person may:

18 (1) Accept or contract to receive, directly or indirectly, any commission, percentage, gift,
19 or other item of value for that person's influence in securing a contract or approving
20 the performance of a contract, from any manufacturer, agent, or vendor of any
21 material of any sort used or recommended to be used in the construction of any
22 project for the plans or construction of which any person is employed; or

23 (2) Give or offer to give to any person any commission, percentage, gift, or other item
24 of value for that person's influence in securing a contract or approving the
25 performance of a contract or supplying any material of any sort which may be for

1 consideration in the construction of any project. A violation of this section is a Class
2 2 misdemeanor for the first offense and a Class 1 misdemeanor for the second or any
3 subsequent offense.

4 Section 67. The board may impose a fee to reimburse the board for all or part of the cost of
5 proceedings resulting in disciplinary action authorized by this Act, the imposition of civil
6 penalties, or the issuance of a cease and desist order. The fee may be imposed if the board shows
7 a person has committed an act or engaged in unauthorized practice, including the unauthorized
8 use of a title, words, figures, or signs implying licensure, or has violated a statute, rule or order
9 of the board. The costs include the amount paid by the board for services from attorney fees,
10 investigators, court reporters, witnesses, expert witnesses, reproduction of records, board
11 members' per diem compensation, board staff time, and expense incurred by board members and
12 staff.

13 Section 68. A professional engineer, architect, land surveyor, photogrammetrist, landscape
14 architect, petroleum release assessor, or petroleum release remediator is not liable for the safety
15 of persons or property on or about a construction project site, or for the construction techniques,
16 procedures, sequences, and schedules, or for the conduct, action, errors, or omissions of any
17 construction contractor, subcontractor, construction manager, or material supplier, their agents
18 or employees, unless that person assumes responsibility therefor by contract or by that person's
19 actual conduct. This section does not relieve a professional engineer, architect, land surveyor,
20 landscape architect, petroleum release assessor, or petroleum release remediator from liability
21 for that person's negligence in design work.

22 Section 69. Any contract, written or oral, for engineering, architectural, land surveying,
23 photogrammetry, landscape architectural, petroleum release assessment, or petroleum release
24 remediation services made by any person in violation of any provision of this Act is
25 unenforceable as to such services. It is a complete defense to any action to enforce payment for

1 any services, if the party contracting for services proves that the person rendering or offering to
2 render services was not at the time such services were offered or rendered, legally authorized to
3 contract for such services.

4 Section 70. No public officer or employee, as defined in subdivisions 22-1-2(37) and (39),
5 charged with the authority or responsibility of approving or accepting plans, specifications, plats,
6 or any other technical submissions, may accept or approve such plans, specifications, plats, or
7 technical submissions which have been prepared in violation of this Act.

8 The building official shall require the owner to engage and designate an architect or
9 professional engineer who shall act as the architect or professional engineer of record on projects
10 that are not exempt. If the circumstances require, the owner may designate a substitute architect
11 or professional engineer of record who shall perform all of the duties required of the original
12 architect or professional engineer of record. The building official shall be notified in writing by
13 the owner if the architect or professional engineer of record is changed or is unable to continue
14 to perform the duties. The architect or professional engineer of record is responsible for
15 reviewing and coordinating all submittal documents prepared by others, including deferred
16 submittal items, for compatibility with the design of the building. A building permit issued with
17 respect to technical submissions which do not conform with the requirements of this Act are
18 invalid.

19 Section 71. No register of deeds of any county may file or record any map, plat, survey, or
20 other technical submissions within the definition of land surveying which does not have
21 impressed thereon and affixed thereto the personal signature, seal, and date of a land surveyor
22 by whom or under whose responsible charge and direct personal supervision the map, plat,
23 survey, or other technical submissions were prepared.

24 Section 72. The board may promulgate rules, pursuant to chapter 1-26, regarding procedures
25 and standards for certifying those who perform environmental technical services relative to site

1 assessment, remedial investigations, and corrective actions necessary to remediate water or soil
2 contaminated with a regulated substance and to establish fees to support this activity. Procedures
3 and requirements may be promulgated by rule for determining eligibility, denial, suspension, and
4 revocation of certification. Standards may include more than one level of certification for persons
5 and business entities, any combination of academic background, professional experience, testing,
6 or other technical professional licenses. Any person or business entity who practices without
7 certification pursuant to this section is guilty of a Class 1 misdemeanor.

8 Section 73. No person or business entity may perform environmental technical services
9 without certification. A violation of this section is a Class 1 misdemeanor.

10 Section 74. That §§ 36-18-4.1 to 36-18-73, inclusive, be repealed.

11 Section 75. All licenses and enrollments in effect on July 1, 1999, and issued pursuant to
12 chapter 36-18, are continued for the balance of the term for which last issued.

13 Section 76. For the purposes of this Act, the term, practice of photogrammetry, means the
14 process of images on a photograph which includes photographing an object, measuring the image
15 of the object on the process photographs, and reducing the measurements to useful form such
16 as a topographic map.

17 Section 77. Any applicant for licensure to practice photogrammetry shall provide the
18 following evidence satisfactory to the board:

- 19 (1) Graduation from an accredited surveying or related field of study approved by the
20 board or substituted experience, in whole or part, acceptable to the board;
- 21 (2) Completion of the minimum number of years of photogrammetric experience under
22 the supervision of a licensed photogrammetrist; and
- 23 (3) Successful completion of examinations.

24 Section 78. A person shall be licensed, upon application, to practice photogrammetry if the
25 person applies to the board before July 1, 2001, and meets the following criteria:

- 1 (1) Is currently using photogrammetric technologies with at least eight years of
2 experience in the profession, two or more in responsible charge of photogrammetric
3 mapping projects meeting Aerial Photography and Mapping Standards of the
4 American Society for Photogrammetry and Remote Sensing or United States National
5 Map Accuracy Standards;
- 6 (2) Submits proof of education which may be one of the following:
- 7 (a) High school graduation or equivalency;
- 8 (b) A baccalaureate degree in surveying or a related field, which shall substitute for
9 four of the required years of experience; or
- 10 (c) A master's degree in surveying or a related field, which shall substitute for five
11 of the required years of experience;
- 12 (3) Submits proof of employment in responsible charge of photogrammetric mapping
13 projects; and
- 14 (4) Submits five references from licensed land surveyors, professional engineers, or others
15 practicing in the area of mapping.

16 The board shall promulgate rules, pursuant to chapter 1-26, to establish education,
17 experience, and examination criteria.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Commerce. H.J. 318

4 2/9/99 Scheduled for Committee hearing on this date.

5 2/16/99 Scheduled for Committee hearing on this date.

6 2/16/99 Commerce Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 527