
SUBSTITUTE SENATE BILL 5698

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Murray, Kohl-Welles, and Delvin)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to soil and wetland scientists; amending RCW
2 18.235.020 and 43.24.150; adding a new chapter to Title 18 RCW;
3 creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature intends to regulate soil
6 science and wetland science as professions by establishing minimum
7 standards of ethical conduct and professional responsibility and by
8 establishing professional education and experience requirements for
9 those persons representing to the public that they are soil scientists
10 or wetland scientists certified by the state. This chapter may not be
11 construed to require a farmer or rancher to seek clearance from a soil
12 scientist in order to undertake an agricultural activity.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Certifying organizations" means the two national organizations
16 that certify soil scientists and the one national organization that
17 certifies wetland scientists. For soil scientists, the certifying
18 organizations are the soil science society of America and the national

1 society of consulting soil scientists. For wetland scientists, the
2 certifying organization is the society of wetland scientists
3 professional certification program.

4 (2) "Department" means the department of licensing.

5 (3) "Director" means the director of the department of licensing.

6 (4) "Holder" means a person who has been issued a certificate under
7 this chapter.

8 (5) "Responsible charge" means the exercise of fully independent
9 control and direction of soil science or wetland science work, or both,
10 or the supervision of such work, and being fully responsible,
11 answerable, accountable, or liable for the results.

12 (6) "Soil" means a living ecosystem that is composed of living and
13 once-living organic materials combined with inorganic mineral materials
14 derived from the break down and weathering of rocks at the earth's
15 surface. Soil develops as a result of weathering processes that
16 reflect effects of climate, topography, and biology acting on the
17 original parent material over time. Soil extends from the surface of
18 the earth down to undifferentiated or unweathered parent material.

19 (7)(a) "Soil science" means the science that:

20 (i) Involves the study of various aspects of the living soil
21 ecosystem and includes the following focused subject areas:

22 (A) Soil physics;

23 (B) Soil chemistry and mineralogy;

24 (C) Soil biochemistry;

25 (D) Soil fertility; and

26 (E) Soil genesis, morphology, and classification; and

27 (ii) Can be used to provide information for projects including, but
28 not limited to, the following:

29 (A) Management of water quantity by utilizing infiltration and
30 percolation capabilities on a soil-specific basis;

31 (B) Treatment of polluted water using soil microbial populations
32 working in concert with natural soil chemistry and mineralogy;

33 (C) Treatment of polluted soils using soil biochemical and physical
34 applications;

35 (D) Interpretation of soil morphology that indicates a wetland
36 condition; and

37 (E) Preparation of detailed soil maps that can be used for site-
38 specific soil management, such as erosion control plans.

1 (b) "Soil science" does not include the study, description, and
2 amelioration of all unconsolidated materials above bedrock or soils as
3 defined by the unified soil classification system of American standard
4 testing method and performed by foresters, geologists, and engineers.

5 (8) "Soil scientist" means a person who, by reason of the person's
6 knowledge of soil science, mathematics, the environment, and the
7 supporting physical and life sciences, acquired by education and
8 practical experience, has met the qualifications established under this
9 chapter, and has been issued a certificate as a soil scientist by the
10 director.

11 (9) "Wetland" means an area that:

12 (a) Predominantly supports wetland vegetation;

13 (b) Has hydric soils; and

14 (c) Has wetland hydrology, as defined in RCW 90.58.030.

15 (10) "Wetland science" means the science that:

16 (a) Studies wetland systems and includes, but is not limited to,
17 the following focused subject areas:

18 (i) Wetland delineation, which is the formal identification and
19 marking of the wetland boundary on the land surface;

20 (ii) Wetland mitigation, which describes compensation to offset
21 wetland or wetland buffer losses as required by federal, state, or
22 local regulations;

23 (iii) Wetland classification, which defines and groups wetlands
24 into discrete ecologically or geomorphically based units which are used
25 to create management plans or to rate wetlands;

26 (iv) Wetland rating, which is used to evaluate a wetland's quality
27 based on individual functions and values; and

28 (v) Wetland ecology, which evaluates the interrelationship of
29 organisms and their wetland environments; and

30 (b) Can be used to provide information for projects including, but
31 not limited to, the following:

32 (i) Defining legally developable portions of a property, as might
33 be limited by wetland or stream presence; or

34 (ii) Assessing wetland type for purposes of compensation or
35 mitigation.

36 (11) "Wetland scientist" means a person who, by reason of the
37 person's knowledge of wetland science, mathematics, the environment,
38 and the supporting physical and life sciences, acquired by education

1 and practical experience, has met the qualifications established under
2 this chapter, and has been issued a certificate as a wetland scientist
3 by the director.

4 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
5 this section, it is unlawful for a person to use in connection with the
6 person's name or otherwise assume or advertise the title soil
7 scientist, soil classifier, wetland scientist, wetland delineator,
8 wetland biologist, or wetland ecologist, or a title conveying the
9 impression that the person is a state-certified soil scientist or
10 state-certified wetland scientist unless the person has received the
11 appropriate certification under this chapter.

- 12 (2) Subsection (1) of this section does not apply to:
- 13 (a) Officers and employees of the United States using the title of
14 soil scientist or wetland scientist solely as such officers or
15 employees;
 - 16 (b) Persons using the title of soil scientist or wetland scientist
17 on manuscripts or reports resulting from research at an academic
18 institution; and
 - 19 (c) Persons using the title of soil scientist or wetland scientist
20 while teaching soil science or wetland science or related physical or
21 natural sciences in an academic institution.

22 NEW SECTION. **Sec. 4.** Whether a person or entity hires or does not
23 hire a person certified under this chapter is not admissible in an
24 action for damages or negligence.

25 NEW SECTION. **Sec. 5.** The director has the following authority in
26 administering this chapter:

- 27 (1) To adopt fees as provided in RCW 43.24.086;
- 28 (2) To adopt rules necessary to carry out this chapter;
- 29 (3) To establish the minimum qualifications for applicants for
30 certification as provided by this chapter, including establishing
31 additional certifying organizations;
- 32 (4) To adopt standards of professional conduct and practice;
- 33 (5) To review and investigate complaints made under this chapter
34 and take disciplinary action for violations of this chapter as provided
35 in chapter 18.235 RCW.

1 NEW SECTION. **Sec. 6.** (1) To become a certified soil scientist or
2 certified wetland scientist, an applicant must meet the requirements of
3 this section:

4 (a) For a soil scientist, the applicant must be a certified
5 professional soil scientist or a certified professional soil classifier
6 through the soil science society of America, or a registered
7 professional soil scientist through the national society of consulting
8 soil scientists or other similar organization established by rule by
9 the director;

10 (b) For a wetland scientist, the applicant must be a certified
11 professional wetland scientist through the society of wetland
12 scientists professional certification program or other similar
13 organization established by rule by the director.

14 (2) The director shall periodically evaluate the certification
15 programs in subsection (1) of this section to assure standards of
16 eligibility and performance are maintained in accordance with rules
17 adopted under this chapter.

18 NEW SECTION. **Sec. 7.** An application for certification must be
19 filed with the director on a form provided by the director and must
20 contain evidence demonstrating the applicant's certification with the
21 certifying organizations described in section 6 of this act. The
22 director may require any information and documentation that reasonably
23 relates to the need to determine whether the applicant meets the
24 criteria for certification. The application fee for initial
25 certification must be determined by the director as provided in RCW
26 43.24.086. The application, together with the fee, must be submitted
27 to the department prior to the application deadline established by the
28 director. Fees for initial certification include issuance of a
29 certificate and are nonrefundable. Nothing in this section requires
30 applicants to maintain membership in any of the certifying
31 organizations.

32 NEW SECTION. **Sec. 8.** (1) The director shall issue a certificate
33 to any applicant who has satisfactorily met all of the requirements of
34 this chapter for certification as a soil scientist or wetland
35 scientist. The certificate must show the full name of the holder, have
36 a unique certification number, and be signed by the director. The

1 issuance by the director of a certificate to an individual is prima
2 facie evidence that the person is entitled to all the rights and
3 privileges of a Washington state certified soil scientist or a
4 Washington state certified wetland scientist while the certificate
5 remains unrevoked or unexpired.

6 (2) Each holder must obtain a seal of the design authorized by the
7 director, bearing the holder's name, certification number, and the
8 legend "Washington state certified soil scientist" or "Washington state
9 certified wetland scientist." Soil science or wetland science reports,
10 plans, and other technical documents prepared by or under the
11 responsible charge of the holder must be signed, dated, and stamped
12 with the seal or facsimile of the seal. Each signature and stamping
13 constitutes a certification by the holder that the document was
14 prepared by or under the holder's responsible charge and that, to the
15 holder's knowledge and belief, the document was prepared in accordance
16 with the requirements of this chapter.

17 NEW SECTION. **Sec. 9.** The director may, upon application and
18 payment of a fee determined by the director as provided in RCW
19 43.24.086, issue a certificate to any person who holds valid
20 credentials issued by the proper authority of any state, territory, or
21 possession of the United States, District of Columbia, or any foreign
22 country, if the applicant's qualifications, as evaluated by the
23 director, meet the requirements of this chapter and the rules adopted
24 by the director.

25 NEW SECTION. **Sec. 10.** The director shall require persons
26 certified under this chapter to obtain continuing professional
27 development or continuing education. The director may also require
28 these certificate holders to demonstrate maintenance of knowledge and
29 skills as a condition of certificate renewal, including peer review of
30 work products.

31 NEW SECTION. **Sec. 11.** Certificates issued under this chapter must
32 be renewed periodically on a date to be set by the director. Fees for
33 renewals must be set by the director by rule as provided in RCW
34 43.24.086. Any holder who fails to pay the prescribed fee must have
35 his or her certificate classified as invalid. Certificate holders who

1 fail to pay the renewal fee within thirty days of the due date shall
2 pay a penalty fee equal to one year's renewal. Any certificate that
3 has been expired for five years or more may be reinstated in
4 conformance with rules adopted by the director.

5 NEW SECTION. **Sec. 12.** All receipts from fees and fines collected
6 under this chapter must be deposited into the business and professions
7 account described in RCW 43.24.150. Expenditures from the fees and
8 fines collected under this chapter deposited in the account may be used
9 only for the purposes of administering this chapter.

10 NEW SECTION. **Sec. 13.** In addition to the unprofessional conduct
11 described in RCW 18.235.130, the following conduct, acts, and
12 conditions constitute unprofessional conduct:

13 (1) Violating any of the provisions of this chapter or the rules
14 adopted under this chapter;

15 (2) Suspension, revocation, or restrictions of certification
16 through the certifying groups described in section 6 of this act;

17 (3) Committing any other act, or failing to act, in a manner
18 contrary to normal professional conduct or contrary to a standard
19 generally expected of those practicing soil science or wetland science;

20 (4) Failing to comply with the terms and conditions of an order
21 issued by the director;

22 (5) Failing to respond to inquiries from clients or other
23 professionals regarding conflicts with the holder's work, opinions, or
24 procedures, in a manner that would be expected from a prudent
25 practitioner;

26 (6) Modifying another holder's work without notifying that holder
27 and clearly describing the modifications in writing and signing the
28 report describing the modifications. However, this subsection does not
29 apply when the plans, maps, or documents are modified by the owner to
30 reflect changes over time for the owner's own purposes and are not used
31 for submittals or bid documents;

32 (7) Offering or accepting money, goods, or other favors as
33 inducement to receive favorable consideration for a professional
34 assignment or as an inducement to approve, authorize, or influence the
35 granting of a professional assignment;

1 (8) Soliciting or accepting gratuities, directly or indirectly,
2 from contractors, their agents, or other parties dealing with clients
3 or employers in connection with work for which the holder is
4 responsible;

5 (9) Using privileged information coming to the holder in the course
6 of his or her assignments as a means of making personal profit beyond
7 their professional compensation;

8 (10) Requesting, proposing, or accepting professional commissions
9 on a contingent basis under circumstances in which the holder's
10 integrity may be compromised;

11 (11) Willfully attempting to interfere with a director's
12 investigation by falsifying records, making false statements, or
13 intimidating or influencing witnesses; or

14 (12) Willfully attempting to suborn another person to violate the
15 law, public policy, or his or her code of professional ethics.

16 NEW SECTION. **Sec. 14.** The director shall immediately suspend the
17 certificate of a person who has been certified pursuant to RCW
18 74.20A.320 by the department of social and health services as a person
19 who is not in compliance with a child support order. If the person has
20 continued to meet all other requirements for a certificate under this
21 chapter during the suspension, reissuance of the certificate must be
22 automatic upon the director's receipt of a release issued by the
23 department of social and health services stating that the holder is in
24 compliance with the child support order. The procedure in RCW
25 74.20A.320 is the exclusive administrative remedy for contesting the
26 establishment of noncompliance with a child support order, and
27 suspension of a certificate under this section, and satisfies the
28 requirements of RCW 34.05.422.

29 NEW SECTION. **Sec. 15.** The director shall suspend the certificate
30 or registration of any person who has been certified by a lending
31 agency and reported to the department for nonpayment or default on a
32 federally or state-guaranteed educational loan or service-conditional
33 scholarship. Prior to the suspension, the agency must provide the
34 person an opportunity for a brief adjudicative proceeding under RCW
35 34.05.485 through 34.05.494 and issue a finding of nonpayment or
36 default on a federally or state-guaranteed educational loan or service-

1 conditional scholarship. The person's certificate or registration may
2 not be reissued until the person provides the director a written
3 release issued by the lending agency stating that the person is making
4 payments on the loan in accordance with a repayment agreement approved
5 by the lending agency. If the person has continued to meet all other
6 requirements for certification or registration during the suspension,
7 reinstatement is automatic upon receipt of the notice and payment of
8 any reinstatement fee the director may impose.

9 NEW SECTION. **Sec. 16.** The uniform regulation of business and
10 professions act, chapter 18.235 RCW, governs the issuance and denial of
11 certificates, and the discipline of holders under this chapter.

12 **Sec. 17.** RCW 18.235.020 and 2008 c 119 s 21 are each amended to
13 read as follows:

14 (1) This chapter applies only to the director and the boards and
15 commissions having jurisdiction in relation to the businesses and
16 professions licensed under the chapters specified in this section.
17 This chapter does not apply to any business or profession not licensed
18 under the chapters specified in this section.

19 (2)(a) The director has authority under this chapter in relation to
20 the following businesses and professions:

21 (i) Auctioneers under chapter 18.11 RCW;

22 (ii) Bail bond agents and bail bond recovery agents under chapter
23 18.185 RCW;

24 (iii) Camping resorts' operators and salespersons under chapter
25 19.105 RCW;

26 (iv) Commercial telephone solicitors under chapter 19.158 RCW;

27 (v) Cosmetologists, barbers, manicurists, and estheticians under
28 chapter 18.16 RCW;

29 (vi) Court reporters under chapter 18.145 RCW;

30 (vii) Driver training schools and instructors under chapter 46.82
31 RCW;

32 (viii) Employment agencies under chapter 19.31 RCW;

33 (ix) For hire vehicle operators under chapter 46.72 RCW;

34 (x) Limousines under chapter 46.72A RCW;

35 (xi) Notaries public under chapter 42.44 RCW;

36 (xii) Private investigators under chapter 18.165 RCW;

1 (xiii) Professional boxing, martial arts, and wrestling under
2 chapter 67.08 RCW;

3 (xiv) Real estate appraisers under chapter 18.140 RCW;

4 (xv) Real estate brokers and salespersons under chapters 18.85 and
5 18.86 RCW;

6 (xvi) Security guards under chapter 18.170 RCW;

7 (xvii) Sellers of travel under chapter 19.138 RCW;

8 (xviii) Timeshares and timeshare salespersons under chapter 64.36
9 RCW;

10 (xix) Whitewater river outfitters under chapter 79A.60 RCW; (~~and~~)
11 (xx) Home inspectors under chapter 18.280 RCW; and
12 (xxi) Soil scientists and wetland scientists under chapter 18.--
13 RCW (the new chapter created in section 20 of this act).

14 (b) The boards and commissions having authority under this chapter
15 are as follows:

16 (i) The state board of registration for architects established in
17 chapter 18.08 RCW;

18 (ii) The cemetery board established in chapter 68.05 RCW;

19 (iii) The Washington state collection agency board established in
20 chapter 19.16 RCW;

21 (iv) The state board of registration for professional engineers and
22 land surveyors established in chapter 18.43 RCW governing licenses
23 issued under chapters 18.43 and 18.210 RCW;

24 (v) The state board of funeral directors and embalmers established
25 in chapter 18.39 RCW;

26 (vi) The state board of registration for landscape architects
27 established in chapter 18.96 RCW; and

28 (vii) The state geologist licensing board established in chapter
29 18.220 RCW.

30 (3) In addition to the authority to discipline license holders, the
31 disciplinary authority may grant or deny licenses based on the
32 conditions and criteria established in this chapter and the chapters
33 specified in subsection (2) of this section. This chapter also governs
34 any investigation, hearing, or proceeding relating to denial of
35 licensure or issuance of a license conditioned on the applicant's
36 compliance with an order entered under RCW 18.235.110 by the
37 disciplinary authority.

1 **Sec. 18.** RCW 43.24.150 and 2008 c 119 s 22 are each amended to
2 read as follows:

3 (1) The business and professions account is created in the state
4 treasury. All receipts from business or professional licenses,
5 registrations, certifications, renewals, examinations, or civil
6 penalties assessed and collected by the department from the following
7 chapters must be deposited into the account:

8 (a) Chapter 18.11 RCW, auctioneers;

9 (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;

10 (c) Chapter 18.96 RCW, landscape architects;

11 (d) Chapter 18.145 RCW, court reporters;

12 (e) Chapter 18.165 RCW, private investigators;

13 (f) Chapter 18.170 RCW, security guards;

14 (g) Chapter 18.185 RCW, bail bond agents;

15 (h) Chapter 18.280 RCW, home inspectors;

16 (i) Chapter 19.16 RCW, collection agencies;

17 (j) Chapter 19.31 RCW, employment agencies;

18 (k) Chapter 19.105 RCW, camping resorts;

19 (l) Chapter 19.138 RCW, sellers of travel;

20 (m) Chapter 42.44 RCW, notaries public; (~~and~~)

21 (n) Chapter 64.36 RCW, timeshares; and

22 (o) Chapter 18.-- RCW (the new chapter created in section 20 of
23 this act).

24 Moneys in the account may be spent only after appropriation.
25 Expenditures from the account may be used only for expenses incurred in
26 carrying out these business and professions licensing activities of the
27 department. Any residue in the account (~~shall~~) must be accumulated
28 and (~~shall~~) may not revert to the general fund at the end of the
29 biennium.

30 (2) The director shall biennially prepare a budget request based on
31 the anticipated costs of administering the business and professions
32 licensing activities listed in subsection (1) of this section, which
33 (~~shall~~) must include the estimated income from these business and
34 professions fees.

35 NEW SECTION. **Sec. 19.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 20.** Sections 1 through 16 of this act
4 constitute a new chapter in Title 18 RCW.

5 NEW SECTION. **Sec. 21.** Sections 3, 4, 8 through 10, and 13 through
6 17 of this act take effect July 1, 2011.

7 NEW SECTION. **Sec. 22.** The director of the department of licensing
8 may take the necessary steps to ensure that sections 3, 4, 8 through
9 10, and 13 through 17 of this act are implemented by July 1, 2011.

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