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SENATE BILL 5446

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Kohl-Welles, Parlette, Franklin, Swecker, Brown and Schoesler

Read first time 01/25/2005.                      Referred to Committee on Labor, Commerce, Research & Development.

1            AN ACT Relating to licensing of soil scientists; adding a new  
2 section to chapter 18.220 RCW; adding a new chapter to Title 18 RCW;  
3 prescribing penalties; providing an effective date; and declaring an  
4 emergency.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds it is in the public  
7 interest to regulate the practice of soil science in order to protect  
8 life, property, health, and to promote public welfare; to define the  
9 practice of soil science as a profession by establishing minimum  
10 standards of ethical conduct and professional responsibility and by  
11 establishing professional education and experience requirements; and to  
12 prevent abuses in the practice of soil science by untrained or  
13 unprincipled individuals.

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

16            (1) "Advisory committee" means a group of either certified  
17 professional soil classifiers or certified professional soil scientists  
18 or licensed soil scientists with broad knowledge and experience in

1 their profession, appointed under this chapter to offer recommendations  
2 to the board and the director on the administration of the program  
3 established under this chapter.

4 (2) "Board" means the geologist licensing board as defined in RCW  
5 18.220.010.

6 (3) "Certified professional soil classifier" means a soil  
7 classifier certified by, and under rules set by, the soil science  
8 society of America.

9 (4) "Certified professional soil scientist" means a soil scientist  
10 certified by, and under rules set by, the soil science society of  
11 America.

12 (5) "Department" means the department of licensing.

13 (6) "Director" means the director of the department of licensing.

14 (7) "Practice of soil science" means performance of soil science  
15 service or work including but not limited to the collection of soil  
16 science data, consultation, investigation, evaluation, interpretation,  
17 planning, soil mapping, or inspection relating to a service or work  
18 that applies to soil science, and the responsible supervision of that  
19 service or work, the performance of which is related to public welfare  
20 or the safeguarding of life, health, property, and the environment,  
21 except as otherwise specifically provided by this chapter.

22 (8) "Practice of soil science for others" includes, but is not  
23 limited to:

24 (a) The preparation of soil science reports, documents, or exhibits  
25 by any commission, board, department, district, or division of the  
26 state or any political subdivision or of any county, city, or other  
27 public body, or by the employees or staff members of the commission,  
28 board, department, district, or division of the state or any political  
29 subdivision or of any county, city, or other public body when the  
30 reports, documents, or exhibits are disseminated or made available to  
31 the public in such a manner that the public may reasonably be expected  
32 to rely upon or be affected by them; and

33 (b) The performance of soil science services by an individual,  
34 firm, partnership, corporation, or other association or by their  
35 employees or staff members, whether or not the principal business of  
36 the organization is the practice of soil science, which the soil  
37 science reports, documents, or exhibits constituting the practice of  
38 soil science are disseminated or made available to the public or an

1 individual or organization in such a manner that the public or  
2 individual or combination of individuals may reasonably be expected to  
3 rely upon or be affected by them. However, soil science reports,  
4 documents, or exhibits that are prepared by the employees or staff  
5 members of an individual, firm, partnership, corporation, or other  
6 association or commission, board, department, district, or division of  
7 the state or political subdivision or a county, city, or other public  
8 body that are for use solely within the organizations are considered  
9 in-house reports, documents, or exhibits and are not the practice of  
10 soil science for others unless or until the reports are disseminated or  
11 made available as set forth in this subsection.

12 (9) "Responsible charge" means the exercise of fully independent  
13 control and direction of soil science work or the supervision of such  
14 work, and being fully responsible, answerable, accountable, or liable  
15 for the results.

16 (10) "Soil" is the unconsolidated either mineral or organic, or  
17 both, material on the immediate surface of the earth that serves as a  
18 natural medium for the growth of plants, and that has been subjected to  
19 and shows effects of genetic and environmental factors of climate,  
20 including water and temperature effects, and macro and microorganisms  
21 conditioned by relief (topography), acting on parent material over a  
22 period of time.

23 (11) "Soil science" means the science that deals with the treatment  
24 and study of soils as a natural resource on the surface of the earth  
25 including but not limited to soil formation, classification,  
26 conservation, and mapping as well as the study of soil physical,  
27 chemical, and biological properties.

28 (12) "Soil scientist" means a person who, by reason of the person's  
29 knowledge of soil science, mathematics, the environment, and the  
30 supporting physical and life sciences, acquired by education and  
31 practical experience, has met the qualifications established under this  
32 chapter, and has been issued a license as a soil scientist by the  
33 board.

34 (13) "Subordinate" means a person who assists in the practice of  
35 soil science by a licensed soil scientist without assuming the  
36 responsible charge of the work.

1        NEW SECTION.    **Sec. 3.**    (1) It is unlawful for a person to practice  
2 or offer to practice soil science for others in this state, or to use  
3 in connection with the person's name or otherwise assume or advertise  
4 any title or description tending to convey the impression that the  
5 person is a licensed soil scientist, unless the person has been  
6 licensed under the provisions of this chapter.

7        (2) A person shall be construed to practice or offer to practice  
8 soil science within the meaning and intent of this chapter, if the  
9 person:

10        (a) Practices any branch of the profession of soil science;

11        (b) Represents by verbal claim, sign, advertisement, letterhead,  
12 card, or in any other way himself or herself to be a soil scientist;

13        (c) Implies through the use of some other title that he or she is  
14 a soil scientist or that he or she is licensed under this chapter; or

15        (d) Holds himself or herself out as able to perform or does perform  
16 any soil science services or work recognized by the board as the  
17 practice of soil science for others.

18        NEW SECTION.    **Sec. 4.**    (1) An advisory committee is created to  
19 provide recommendations to the board and the director concerning the  
20 administration of this chapter. The advisory committee consists of  
21 five members who are conversant with and experienced in the soil  
22 science profession, and who are otherwise eligible for licensure under  
23 this chapter. Subsequent to the initial appointments, all members must  
24 be licensed under this chapter. All advisory committee members must be  
25 soil science society of America certified professional soil scientists  
26 or certified professional soil classifiers. Each member of the  
27 advisory committee must be a resident of the state.

28        (2) The director shall appoint to the advisory committee  
29 individuals from across the state, utilizing geographic and  
30 experiential diversity as much as possible. The terms of the members  
31 of the advisory committee are a maximum of three years, except that the  
32 initial appointees to the advisory committee serve the following terms:  
33 Two members for two years and three members for three years. No member  
34 of the advisory committee is eligible for reappointment to a third  
35 consecutive term, but any member is eligible for reappointment after an  
36 absence of at least one year from the advisory committee. Any member  
37 who is reappointed following an absence of at least one year from the

1 advisory committee is eligible for reappointment to a second  
2 consecutive term and is again eligible for reappointment after an  
3 absence of at least one year from the advisory committee.

4 (3) Members of the advisory committee serve until replaced by a  
5 subsequent appointment even if their appointment exceeds the length of  
6 their term, but may resign prior to completing the term of appointment.  
7 The director may for just cause remove an advisory committee member.  
8 The director shall appoint a new member to fill any vacancy on the  
9 advisory committee for the remainder of the unexpired term. Members of  
10 the advisory committee may not be compensated, but shall be reimbursed  
11 for expenses incurred in accordance with RCW 43.03.050 and 43.03.060.  
12 Three members constitute a quorum.

13 (4) At the request of the advisory committee, the director may  
14 appoint additional temporary members to the advisory committee for  
15 assistance with rule development, examination development, and  
16 technical advice on complaints. Temporary members must meet the same  
17 minimum qualifications as regular members of the advisory committee.  
18 Temporary members have all the powers, duties, and immunities of  
19 regular members of the advisory committee and shall be reimbursed for  
20 expenses incurred in accordance with RCW 43.03.050 and 43.03.060. The  
21 director shall limit the term of temporary members to one year, but may  
22 extend the original appointment up to one additional year.

23 NEW SECTION. **Sec. 5.** The advisory committee shall make  
24 recommendations to the board regarding:

25 (1) Developing and adopting rules to administer this chapter  
26 including, but not limited to, evaluating the experience, scope, and  
27 standards of practice of soil science;

28 (2) Reviewing complaints and investigations pertaining to the  
29 practice of soil science; and

30 (3) Performing other duties deemed necessary by the director or the  
31 board.

32 NEW SECTION. **Sec. 6.** The director has the following authority in  
33 administering this chapter:

34 (1) To adopt, amend, and rescind rules approved by the board as  
35 deemed necessary to carry out this chapter;

36 (2) To adopt fees as provided in RCW 43.24.086;

1 (3) To administer licensing examinations approved by the board and  
2 to adopt or recognize examinations prepared by other organizations as  
3 approved by the board;

4 (4) To adopt standards of professional conduct and practice as  
5 approved by the board; and

6 (5) To enter into an assurance of discontinuance in lieu of issuing  
7 a statement of charges or conducting a hearing. The assurance must  
8 consist of a statement of the law in question and an agreement to not  
9 violate the stated provision. Violation of an assurance under this  
10 subsection is grounds for disciplinary action.

11 NEW SECTION. **Sec. 7.** In order to become a licensed soil  
12 scientist, an applicant must meet the following requirements:

13 (1) An applicant who applies for soil scientist licensing before  
14 July 1, 2006, is considered qualified for licensing, without further  
15 written examination, if the applicant possesses the specific record of  
16 being a current soil science society of America certified professional  
17 soil scientist or certified professional soil classifier in good  
18 standing.

19 (2) On or after July 1, 2006, in order to become a licensed soil  
20 scientist, an applicant must:

21 (a) Be of good moral and ethical character as attested to by  
22 letters of reference submitted by the applicant or as otherwise  
23 determined by the board;

24 (b) Have graduated from a course of study in soil science  
25 satisfactory to the board or satisfy educational equivalents determined  
26 by the board;

27 (c) Have a documented record of a minimum of five years of  
28 experience obtained after the completion of the academic requirements  
29 specified in this section, in soil science work of a character  
30 satisfactory to the board, demonstrating that the applicant is  
31 qualified to assume responsible charge of such work upon licensing as  
32 a soil scientist. The board requires that three years of the  
33 experience be gained under the supervision of a soil scientist licensed  
34 in this or any other state, or under the supervision of others who, in  
35 the opinion of the board, are qualified to have responsible charge of  
36 soil science work;

1 (d) Pass an examination covering the fundamentals and practice of  
2 soil science prescribed or accepted by the board; and

3 (e) Meet other general or individual requirements established by  
4 the board under its authority under this chapter.

5 NEW SECTION. **Sec. 8.** (1) Experience in professional practice as  
6 required under section 7(2)(c) of this act, of a character acceptable  
7 to the board and acquired prior to July 1, 2006, is acceptable if the  
8 experience: (a) Was acquired under the direct supervision of a soil  
9 scientist who meets the educational and experience requirements for  
10 licensing under this chapter, or who is licensed in another state that  
11 has licensing requirements that are substantially similar to this  
12 chapter; or (b) would constitute responsible charge of professional  
13 soil science work, as determined by the board;

14 (2) Each year of full-time graduate study in soil science qualifies  
15 as one year of professional experience, up to a maximum of two years.  
16 The board may accept soil science research or teaching of soil science  
17 at the college or university level as qualifying experience, provided  
18 that such research or teaching, in the judgment of the board, is  
19 comparable to experience obtained in the practice of soil science.

20 NEW SECTION. **Sec. 9.** An application for licensing shall be filed  
21 with the director on a form provided by the director and must contain  
22 statements made under oath demonstrating the applicant's education and  
23 practical experience. The director may require any information and  
24 documentation that reasonably relates to the need to determine whether  
25 the applicant meets the criteria for licensing. The application fee  
26 for initial licensing shall be determined by the director as provided  
27 in RCW 43.24.086. The application, together with the fee, must be  
28 submitted to the department prior to the application deadline  
29 established by the director. Fees for initial licensing shall include  
30 the examination and issuance of a certificate. If the director finds  
31 an applicant ineligible for licensing, the fee is retained as an  
32 application fee.

33 NEW SECTION. **Sec. 10.** Examinations of applicants for licensing,  
34 when required, shall be held at such times and places as determined by  
35 the board with the director's approval. The scope of the examination

1 must be directed to an applicant's ability to practice soil science in  
2 a manner that ensures the safety of life, health, and property. A  
3 candidate failing an examination may apply for reexamination.  
4 Subsequent examinations will be granted upon payment of a fee to be  
5 determined by the director as provided in RCW 43.24.086.

6 NEW SECTION. **Sec. 11.** (1) The director shall issue a license to  
7 any applicant who has satisfactorily met all of the requirements of  
8 this chapter for licensing as a soil scientist. The license must show  
9 the full name of the license holder, have a number, and be signed by  
10 the director and an officer of the board. The issuance by the director  
11 of a license to an individual is prima facie evidence that the person  
12 is entitled to all the rights and privileges of a licensed soil  
13 scientist while the license remains unrevoked or unexpired.

14 (2) Each license holder must obtain a seal of the design authorized  
15 by the director, bearing the licensee's name, number, and the legend  
16 "licensed soil scientist." Soil science reports, plans, and other  
17 technical documents prepared by or under the responsible charge of the  
18 license holder must be signed, dated, and stamped with the seal or  
19 facsimile of the seal. Each signature and stamping constitutes a  
20 certification by the license holder that the document was prepared by  
21 or under the license holder's responsible charge and that to the  
22 license holder's knowledge and belief the document was prepared in  
23 accordance with the requirements of this chapter.

24 NEW SECTION. **Sec. 12.** The director may, upon application and  
25 payment of a fee determined by the director as provided in RCW  
26 43.24.086, issue a license without further examination as a soil  
27 scientist to any person who holds a valid license or certificate of  
28 qualification issued by the proper authority of any state, territory,  
29 or possession of the United States, District of Columbia, or any  
30 foreign country, if the applicant's qualifications, as evaluated by the  
31 board, meet the requirements of this chapter and the rules adopted by  
32 the director.

33 NEW SECTION. **Sec. 13.** Licenses issued under this chapter shall be  
34 renewed periodically on a date to be set by the director in conformance  
35 with RCW 43.24.140. A license holder who fails to pay the prescribed



1 fee within ninety days shall have his or her license suspended until  
2 the license holder pays a renewal fee equal to the current fee plus an  
3 amount equal to one year's renewal fee. Any license that has been  
4 expired or suspended for five years or more may be reinstated in  
5 conformance with rules adopted by the director. Reinstatement  
6 conditions may include demonstration of continued practice or  
7 competency in the practice of soil science.

8 NEW SECTION. **Sec. 14.** All receipts from fees and fines collected  
9 under this chapter must be deposited into the geologists' account  
10 created in RCW 18.220.120. Expenditures from the account may be used  
11 only for the purposes and provisions of this chapter, including the  
12 cost of administering this chapter. Only the director of licensing or  
13 the director's designee may authorize expenditures from the account.  
14 The account is subject to allotment procedures under chapter 43.88 RCW,  
15 but an appropriation is not required for expenditures.

16 NEW SECTION. **Sec. 15.** In addition to the unprofessional conduct  
17 described in RCW 18.235.130, the following conduct, acts, and  
18 conditions constitute unprofessional conduct:

- 19 (1) Violating any of the provisions of this chapter or the rules  
20 adopted under this chapter;
- 21 (2) Not meeting the qualifications for licensing set forth by this  
22 chapter;
- 23 (3) Failing to comply with an assurance of discontinuance entered  
24 into with the director; or
- 25 (4) Committing any other act, or failing to act, which act or  
26 failure are customarily regarded as being contrary to the accepted  
27 professional conduct or standard generally expected of those practicing  
28 soil science.

29 NEW SECTION. **Sec. 16.** (1) The procedures governing adjudicative  
30 proceedings before agencies under chapter 34.05 RCW govern all hearings  
31 before the director or the director's designee. Upon a finding that a  
32 license holder or applicant has committed unprofessional conduct, the  
33 director may issue an order providing for one or any combination of the  
34 following:

- 35 (a) Revocation of the license;

- 1 (b) Suspension of the license for a fixed or indefinite term;  
2 (c) Restriction or limitation of the practice;  
3 (d) Issuance of a civil fine not to exceed five thousand dollars  
4 for each violation;  
5 (e) Requiring satisfactory completion of a specific program of  
6 remedial education or treatment;  
7 (f) Monitoring of the practice by a peer approved by the director;  
8 (g) Reprimand or censure;  
9 (h) Compliance with conditions of probation for a designated period  
10 of time;  
11 (i) Withholding of a license request;  
12 (j) Refund of fees billed to and collected from the consumer; or  
13 (k) Other corrective action.  
14 (2) Any of the actions under this section may be totally or partly  
15 stayed by the director. All costs associated with compliance with  
16 orders issued under this section are the obligation of the license  
17 holder or applicant.

18 NEW SECTION. **Sec. 17.** A person, including but not limited to  
19 consumers, licensees, corporations, organizations, and state and local  
20 governments or agencies, may submit a written complaint to the  
21 department charging a license holder or applicant with unprofessional  
22 conduct and specifying the grounds for the charge. If the director  
23 determines that the complaint merits investigation, or if the director  
24 has reason to believe, without a formal complaint, that a license  
25 holder or applicant may have engaged in unprofessional conduct, the  
26 director may investigate to determine if there has been unprofessional  
27 conduct. A person who files a complaint under this section in good  
28 faith is immune from suit in any civil action related to the filing or  
29 contents of the complaint.

30 NEW SECTION. **Sec. 18.** The board shall immediately suspend the  
31 license of a person who has been certified pursuant to RCW 74.20A.320  
32 by the department of social and health services as a person who is not  
33 in compliance with a child support order. If the person has continued  
34 to meet all other requirements for a license under this chapter during  
35 the suspension, reissuance of the license shall be automatic upon the  
36 board's receipt of a release issued by the department of social and

1 health services stating that the licensee is in compliance with the  
2 child support order. The procedure in RCW 74.20A.320 is the exclusive  
3 administrative remedy for contesting the establishment of noncompliance  
4 with a child support order, and suspension of a license under this  
5 subsection, and satisfies the requirements of RCW 34.05.422.

6 NEW SECTION. **Sec. 19.** The following acts are prohibited and any  
7 person committing any of the following acts is guilty of a class 1  
8 civil infraction under chapter 7.80 RCW:

9 (1) The practice or offer to practice soil science without being  
10 licensed in accordance with the provisions of this chapter;

11 (2) Presenting or attempting to use as his or her own the  
12 certificate of licensing or seal of another;

13 (3) Giving any false or forged evidence of any kind to the director  
14 or his or her authorized representative in obtaining a license;

15 (4) Falsely impersonating any other licensee; or

16 (5) Attempting to use the expired or revoked certificate of  
17 licensing.

18 All fees, fines, and penalties collected or assessed by a court  
19 because of a violation of this section must be remitted to the  
20 department to be deposited into the geologists' account created in RCW  
21 18.220.120.

22 NEW SECTION. **Sec. 20.** The director is authorized to apply for  
23 relief by injunction without bond, to restrain a person from the  
24 commission of any act that is prohibited under this chapter. In such  
25 proceedings, it is not necessary to allege or prove either that an  
26 adequate remedy at law does not exist, or that substantial or  
27 irreparable damage would result from continued violation. The  
28 director, individuals acting on the director's behalf, and members of  
29 the board are immune from suit in any action, civil or criminal, based  
30 on disciplinary proceedings or other official acts performed in the  
31 course of their duties in the administration and enforcement of this  
32 chapter.

33 NEW SECTION. **Sec. 21.** The following activities do not require a  
34 certificate of licensing under this chapter:

1 (1) Soil science work performed by an employee or a subordinate of  
2 a soil scientist licensed under this chapter, provided that the work  
3 does not include responsible charge of soil science work as covered by  
4 this section, and is performed under the direct supervision of a soil  
5 scientist licensed under this chapter, who shall be and remains  
6 responsible for such work;

7 (2) Soil science work performed by officers and employees of the  
8 United States practicing solely as such officers and employees;

9 (3) Soil science research conducted through academic institutions  
10 by agencies of the federal or state governments, nonprofit research  
11 institutions, or for-profit organizations, including submission of  
12 reports of research to public agencies;

13 (4) Teaching soil science or related physical or natural sciences;

14 (5) The practice of engineering or other licensed professions: (a)  
15 The acquisition of engineering data involving soil, rock, ground water,  
16 and other earth materials; evaluation of the physical and chemical  
17 properties of soil, rock, ground water, and other earth materials; and  
18 the utilization of these data in analysis, design, and construction by  
19 professional engineers appropriately registered or licensed in this  
20 state; and (b) similar work performed by persons or organizations  
21 licensed or registered in any other profession or occupation related to  
22 soil science, provided that such work is permitted under the applicable  
23 licensing or registration law, and is incidental to the practice or the  
24 profession or occupation for which licensing or registration is  
25 required. Nothing in this section shall be construed to permit the use  
26 of the title soil scientist, or any other specialty as defined by the  
27 director, by an engineer or other licensed professional except as  
28 licensed under this chapter;

29 (6) General scientific work customarily performed by such physical  
30 or natural scientists as chemists, archaeologists, geologists,  
31 geographers, hydrologists, and oceanographers, providing such work does  
32 not include the design and execution of soil science investigations,  
33 being in responsible charge of soil science, or the drawing of soil  
34 science conclusions and recommendations in a way that affects the  
35 public health, safety, or welfare; or

36 (7) The giving of testimony or preparation and presentation of  
37 exhibits or documents for the sole purpose of being placed in evidence

1 before any administrative or judicial tribunal or hearing, providing  
2 such testimony, exhibits, or documents do not imply that the person is  
3 licensed under the provisions of this chapter.

4 NEW SECTION. **Sec. 22.** The uniform regulation of business and  
5 professions act, chapter 18.235 RCW, governs unlicensed practice, the  
6 issuance and denial of licenses, and the discipline of licensees under  
7 this chapter.

8 NEW SECTION. **Sec. 23.** A new section is added to chapter 18.220  
9 RCW to read as follows:

10 The board has the following authority in administering chapter  
11 18.-- RCW (sections 1 through 22, 24, and 26 of this act):

12 (1) To establish rules, including committee organization and  
13 assignment of terms, and meeting frequency and timing, for adoption by  
14 the director;

15 (2) To establish the minimum qualifications for applicants for  
16 licensure as provided by chapter 18.-- RCW (sections 1 through 22, 24,  
17 and 26 of this act);

18 (3) To approve the method of administration for examinations  
19 required by chapter 18.-- RCW (sections 1 through 22, 24, and 26 of  
20 this act) or by rule as established by the director. To approve the  
21 adoption or recognition of examinations prepared by other organizations  
22 for adoption by the director. To set the time and place of  
23 examinations with the approval of the director; and

24 (4) To establish and review standards of professional conduct and  
25 practice for adoption by the director.

26 NEW SECTION. **Sec. 24.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 25.** Sections 1 through 22, 24, and 26 of this  
31 act constitute a new chapter in Title 18 RCW.

32 NEW SECTION. **Sec. 26.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 July 1, 2005.

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