

SENATE BILL REPORT

SSB 5698

As Passed Senate, March 11, 2009

Title: An act relating to soil and wetland scientists.

Brief Description: Regulating soil and wetland science professions.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Murray, Kohl-Welles and Delvin).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/12/09, 2/19/09 [DPS, DNP].

Passed Senate: 3/11/09, 35-13.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5698 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Honeyford and King.

Staff: Kathleen Buchli (786-7488)

Background: A soil scientist studies the upper few meters of the earth's crust in terms of its physical and chemical properties; distribution, genesis and morphology; and biological components. Soil science is the science dealing with soils as a natural resource on the surface of the earth, including soil formation, classification, and mapping; physical, chemical, biological, and fertility properties of soils; and these properties in relation to the use and management of the soils. The state has no set requirements to become a soil scientist.

A wetlands scientist studies primarily the upper meter of the earth's surface in terms of its physical and hydrological properties. To be considered a wetland, an undisturbed area must have wetland hydrology, wetland vegetation, and wetland soils. Wetland scientists determine where a wetland begins and ends. The state has no set requirements to become a wetland scientist.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2007 the Legislature requested the Department of Licensing (DOL) to conduct a sunrise review of soil and wetland scientists. DOL was asked to revisit a previous review of soil scientists that it conducted in 2005, which recommended that soil scientists be regulated but did not specify the type of regulation. The 2008 sunrise review of soil and wetland scientists recommends that the Legislature pursue certification of soil and wetland scientists.

Summary of Substitute Bill: Soil scientists and wetland scientists must be certified. It is unlawful for a person to use, assume, or advertise the title soil scientist, soil classifier, wetland scientist, wetland delineator, wetland biologist, wetland ecologist, or a title conveying the impression that the person is a state-certified soil or wetland scientist unless that person has received the appropriate certification. The Director of DOL may adopt fees, adopt rules, establish the minimum qualifications for applicants for certification, adopt standards of professional conduct and practice, and take disciplinary action for violations. The Director must require certificate holders to obtain continuing education or professional development and must establish certificate renewal dates and fees.

To become a certified soil scientist, an applicant must be a certified professional soil scientist or a certified professional soil classifier through the Soil Science Society of America, or must be a registered professional soil scientist through the National Society of Consulting Soil Scientists or other similar organization established by the Director in consultation with the advisory committee. To become a certified wetland scientist, an applicant must be a certified professional wetland scientist through the Society of Wetland Scientists Professional Certification Program or other similar organization established by the Director in consultation with the advisory committee.

The application fee for initial certification must be determined by the Director and must be in an amount so that the costs of certification are fully borne by the soil scientists and wetland scientists. Fees for initial certification are nonrefundable. Maintaining membership in a certifying organization is not a requirement.

Certificate holders must obtain a seal bearing the holder's name, certification number, and the legend "Washington State Certified Soil Scientist" or "Washington State Certified Wetland Scientist." Reports, plans, and other technical documents prepared by the certificate holder must be signed, dated, and stamped with the seal.

Applicants from another state may be issued a certificate by the Director if they meet the requirements of the act and rules adopted by the Director.

Conduct, acts, and conditions that constitute unprofessional conduct are established. These include violating the provisions of the act or the rules adopted by the Director; suspension, revocation, or restrictions of certification through a certifying group; committing an act contrary to normal professional conduct; failing to comply with the terms and conditions of the Director; failing to respond to inquiries from clients or other professionals regarding conflicts with the certificate holder's work; modifying another certificate holder's work without notifying the certificate holder; offering or accepting money, goods, or other favors in order to receive favorable consideration for a professional assignment; soliciting or accepting gratuities; using privileged information to make a personal profit; accepting

professional commissions on a contingency basis under circumstances in which the holder's integrity may be compromised; interfering with a Director's investigation; or willfully attempting to suborn another person to violate the law, public policy, or the code of professional ethics.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed except for sections 3, 4, 10-12, and 15-19 which take effect July 1, 2011.

Staff Summary of Public Testimony: PRO: We want to make sure soil and wetland scientists are properly educated and certified and this program does that. This is a title act and only applies to those who want to call themselves a soil scientist or wetland scientist. We have had two sunrise review reports and both found that there are public safety and welfare issues that this program would address. This bill will simplify the certification program and does not have the DOL create its own program. This bill is much less expensive than other bills.

Soil scientists possess a wide variety of knowledge, skills, and expertise. We work with soils in forestry, agriculture, and water resources. We deal with farmers, local citizens, city and county planners, and engineers. We provide farmers with information on soil fertility and soil erosion management. We want to ensure that people who call themselves wetland scientists do have credentials. Sometimes wetlands are missed or over delineated; if someone had better credentials, they would be more accurate. Certification would provide a way for people to report concerns about individuals. This bill only affects those who call themselves soil scientists or wetland scientists. This should not result in confusion in the marketplace. Public safety problems include groundwater contamination and people not being able to develop their property.

As far as confusion in the marketplace, the soil scientists will direct people to architects and engineers as necessary; we are clear about professional boundaries. There is no consumer recourse for poor work right now. Wetland scientists were added because of the problems of wetland delineations. We are here because we want to address the problems and other technical disciplines have requested this review. The Department of Natural Resources has conditional support. We are concerned about foresters and geologists and the bill needs clarifying language to ensure that it does not impact those professions.

CON: This is a step in the right direction when compared to proposals of previous years. We are concerned that this title act will become a practices act in two or three years. We are worried about confusion and friction between regulated professions. If they must be certified by a national organization, the need for the bill is not clear. This does not meet the test of regulating only those businesses when not regulating them results in harm to public safety and health. Adding wetland scientists to the bill to reduce costs is not good public policy.

We are worried about confusion in the marketplace and someone hiring the wrong person, resulting in higher costs in the long run. If this is a matter of public safety, we should not just stop with these groups but look at hydrologists, fisheries biologists, and coastal scientists. It is arbitrary to look at these two disciplines as opposed to other technical disciplines. We are concerned about the need for this bill and unintended consequences.

OTHER: Boards are used to access technical expertise with regard to evaluating complaints and helping DOL determine whether competency is achieved.

Persons Testifying: PRO: Allen Miller, Law Offices of Allen T. Miller; Eric Choker, Spokane County Conservation District; Jim Wiggins, Karla Van Leaven, Aqua-Terr Systems, Inc.; Toby Rodgers, Washington Society of Professional Soil Scientists; Chuck Turley, Department of Natural Resources; Lisa Palazzi, Pacific Rim Soil and Water.

CON: Heather Hansen, Washington Friends of Farms and Forests; James Curry, Architects and Engineers Legislative Council; Jerry Smedes, Northwest Environmental Business Council.

OTHER: Joe Vincent, Jr., DOL.