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HOUSE BILL 1881

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Williams, Wood, Hunt, Morris, and Nelson

Read first time 02/02/09. Referred to Committee on Commerce & Labor.

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 finds that in order to  
6 protect life, property, and health, and to promote public welfare, it  
7 is in the public interest to regulate soil science and wetland science  
8 as professions by establishing minimum standards of ethical conduct and  
9 professional responsibility and by establishing professional education  
10 and experience requirements for those persons representing to the  
11 public that they are soil scientists or wetland scientists certified by  
12 the state.

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

15            (1) "Advisory committee" means the advisory committee created in  
16 section 5 of this act.

17            (2) "Certifying organizations" means the two national organizations  
18 that certify soil scientists and the one national organization that

1 certifies wetland scientists. For soil scientists, the certifying  
2 organizations are the soil science society of America (SSSA) and the  
3 national society of consulting soil scientists (NSCSS). For wetland  
4 scientists, the certifying organization is the society of wetland  
5 scientists professional certification program (SWS-PCP).

6 (3) "Department" means the department of licensing.

7 (4) "Director" means the director of the department of licensing.

8 (5) "Holder" means a person who has been issued a certificate under  
9 this chapter.

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

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

21 (8) "Soil science" means the science that:

22 (a) Involves the study of various aspects of the living soil  
23 ecosystem and includes the following focused subject areas:

24 (i) Soil physics;

25 (ii) Soil chemistry and mineralogy;

26 (iii) Soil biochemistry;

27 (iv) Soil fertility; and

28 (v) Soil genesis, morphology, and classification; and

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

31 (i) Management of water quantity by utilizing infiltration and  
32 percolation capabilities on a soil-specific basis;

33 (ii) Treatment of polluted water using soil microbial populations  
34 working in concert with natural soil chemistry and mineralogy;

35 (iii) Treatment of polluted soils using soil biochemical and  
36 physical applications;

37 (iv) Interpretation of soil morphology that indicates a wetland  
38 condition; and

1 (v) Preparation of detailed soil maps that can be used for site-  
2 specific soil management, such as erosion control plans.

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

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

10 (a) Predominantly supports wetland vegetation;

11 (b) Has hydric soils; and

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

13 (11) "Wetland science" means the science that:

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

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

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

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

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

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

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

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

32 (ii) Assessing wetland type for purposes of compensation or  
33 mitigation.

34 (12) "Wetland scientist" means a person who, by reason of the  
35 person's knowledge of wetland science, mathematics, the environment,  
36 and the supporting physical and life sciences, acquired by education  
37 and practical experience, has met the qualifications established under

1 this chapter, and has been issued a certificate as a wetland scientist  
2 by the director.

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

11 (2) Subsection (1) of this section does not apply to:

12 (a) Officers and employees of the United States using the title of  
13 soil scientist or wetland scientist solely as such officers or  
14 employees.

15 (b) Persons using the title of soil scientist or wetland scientist  
16 on manuscripts or reports resulting from research at an academic  
17 institution; and

18 (c) Persons using the title of soil scientist or wetland scientist  
19 while teaching soil science or wetland science or related physical or  
20 natural sciences in an academic institution.

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

24 NEW SECTION. **Sec. 5.** (1) An advisory committee is created to  
25 provide recommendations to the director concerning the administration  
26 of this chapter. The advisory committee consists of seven members  
27 appointed by the director. Three members must be conversant with and  
28 experienced in the soil science profession; three members must be  
29 conversant with and experienced in the wetland science profession; and  
30 one member must represent the public. Subsequent to the initial  
31 appointments, all members except for the public member must be  
32 certified under this chapter. Each member of the advisory committee  
33 must be a resident of the state.

34 (2) The director shall appoint to the advisory committee  
35 individuals from across the state, and from both public and private

1 sectors, utilizing geographic and experiential diversity as much as  
2 possible. The terms of the members of the advisory committee must be  
3 three years, except that the initial appointees to the advisory  
4 committee serve the following terms to be specified by the director:  
5 Two members for one year, two members for two years, and three members  
6 for three years. No member of the advisory committee is eligible for  
7 reappointment to a third consecutive term, but any member is eligible  
8 for reappointment after an absence of at least one year from the  
9 advisory committee. Any member who is reappointed following an absence  
10 of at least one year from the advisory committee is eligible for  
11 reappointment to a second consecutive term and is again eligible for  
12 reappointment after an absence of at least one year from the advisory  
13 committee. No member of the advisory committee, other than the public  
14 member, may be considered for reappointment if not certified in  
15 accordance with this chapter.

16 (3) Members of the advisory committee serve until replaced by a  
17 subsequent appointment, even if their appointment exceeds the length of  
18 their term, but may resign prior to completing the term of appointment.  
19 The director may for just cause remove an advisory committee member.  
20 The director shall appoint a new member to fill any vacancy on the  
21 advisory committee for the remainder of the unexpired term. Members of  
22 the advisory committee may not be compensated, but must be reimbursed  
23 for expenses incurred in accordance with RCW 43.03.050 and 43.03.060.  
24 Four members constitute a quorum of the committee.

25 (4) At the request of the advisory committee, the director may  
26 appoint additional temporary members to the advisory committee for  
27 assistance with rule development and technical advice on complaints.  
28 Temporary members must meet the same minimum qualifications as regular  
29 members of the advisory committee. Temporary members have all the  
30 powers, duties, and immunities of regular members of the advisory  
31 committee and must be reimbursed for expenses incurred in accordance  
32 with RCW 43.03.050 and 43.03.060. The director shall limit the term of  
33 temporary members to one year, but may extend the original appointment  
34 up to one additional year at the request of the advisory committee.

35 NEW SECTION. **Sec. 6.** The advisory committee shall make  
36 recommendations to the director regarding:

1 (1) Developing and adopting rules to administer this chapter  
2 including, but not limited to, evaluating the experience, scope, and  
3 standards of the practice of soil science or wetland science;

4 (2) Reviewing complaints and investigations pertaining to this  
5 chapter;

6 (3) Performing other duties deemed necessary by the director; and

7 (4) Establishing additional certifying organizations recognized for  
8 the purposes of certifying individuals under this chapter.

9 NEW SECTION. **Sec. 7.** The director has the following authority in  
10 administering this chapter:

11 (1) To adopt fees as provided in RCW 43.24.086;

12 (2) To adopt rules necessary to carry out this chapter;

13 (3) To establish the minimum qualifications for applicants for  
14 certification as provided by this chapter;

15 (4) To adopt standards of professional conduct and practice;

16 (5) To make appointments or modify appointments to the advisory  
17 committee;

18 (6) To take disciplinary action for violations of this chapter as  
19 provided in chapter 18.235 RCW.

20 NEW SECTION. **Sec. 8.** To become a certified soil scientist or  
21 certified wetland scientist, an applicant must meet the requirements of  
22 this section:

23 (1) For a soil scientist, the applicant must be a certified  
24 professional soil scientist (CPSS) or a certified professional soil  
25 classifier (CPSC) through the soil science society of America (SSSA),  
26 or a registered professional soil scientist (RPSS) through the national  
27 society of consulting soil scientists (NSCSS) or other similar  
28 organization established by rule by the director upon recommendation of  
29 the advisory committee;

30 (2) For a wetland scientist, the applicant must be a certified  
31 professional wetland scientist (PWS) through the society of wetland  
32 scientists professional certification program (SWS-PCP) or other  
33 similar organization established by rule by the director upon  
34 recommendation of the advisory committee.

1        NEW SECTION.    **Sec. 9.**    An application for certification must be  
2 filed with the director on a form provided by the director and must  
3 contain statements made under oath demonstrating the applicant's  
4 current status in good standing with the certifying organizations  
5 described in section 8 of this act.    The director may require any  
6 information and documentation that reasonably relates to the need to  
7 determine whether the applicant meets the criteria for certification.  
8 The application fee for initial certification must be determined by the  
9 director as provided in RCW 43.24.086.    The application, together with  
10 the fee, must be submitted to the department prior to the application  
11 deadline established by the director.    Fees for initial certification  
12 include issuance of a certificate and are nonrefundable.

13        NEW SECTION.    **Sec. 10.**    (1) The director shall issue a certificate  
14 to any applicant who has satisfactorily met all of the requirements of  
15 this chapter for certification as a soil scientist or wetland  
16 scientist.    The certificate must show the full name of the holder, have  
17 a unique certification number, and be signed by the director.    The  
18 issuance by the director of a certificate to an individual is prima  
19 facie evidence that the person is entitled to all the rights and  
20 privileges of a Washington state certified soil scientist or a  
21 Washington state certified wetland scientist while the certificate  
22 remains unrevoked or unexpired.

23        (2) Each holder must obtain a seal of the design authorized by the  
24 director, bearing the holder's name, certification number, and the  
25 legend "Washington state certified soil scientist" or "Washington state  
26 certified wetland scientist."    Soil science or wetland science reports,  
27 plans, and other technical documents prepared by or under the  
28 responsible charge of the holder must be signed, dated, and stamped  
29 with the seal or facsimile of the seal.    Each signature and stamping  
30 constitutes a certification by the holder that the document was  
31 prepared by or under the holder's responsible charge and that, to the  
32 holder's knowledge and belief, the document was prepared in accordance  
33 with the requirements of this chapter.

34        NEW SECTION.    **Sec. 11.**    The director may, upon application and  
35 payment of a fee determined by the director as provided in RCW  
36 43.24.086, issue a certificate to any person who holds valid

1 credentials issued by the proper authority of any state, territory, or  
2 possession of the United States, District of Columbia, or any foreign  
3 country, if the applicant's qualifications, as evaluated by the  
4 director, meet the requirements of this chapter and the rules adopted  
5 by the director.

6 NEW SECTION. **Sec. 12.** The director shall require persons  
7 certified under this chapter to obtain continuing professional  
8 development or continuing education. The director may also require  
9 these certificate holders to demonstrate maintenance of knowledge and  
10 skills as a condition of certificate renewal, including peer review of  
11 work products.

12 NEW SECTION. **Sec. 13.** Certificates issued under this chapter must  
13 be renewed periodically on a date to be set by the director. Fees for  
14 renewals must be set by the director by rule as provided in RCW  
15 43.24.086. Any holder who fails to pay the prescribed fee must have  
16 his or her certificate classified as invalid. Certificate holders who  
17 fail to pay the renewal fee within thirty days of the due date shall  
18 pay a penalty fee equal to one year's renewal. Any certificate that  
19 has been expired for five years or more may be reinstated in  
20 conformance with rules adopted by the director.

21 NEW SECTION. **Sec. 14.** All receipts from fees and fines collected  
22 under this chapter must be deposited into the business and professions  
23 account described in RCW 43.24.150. Expenditures from the fees and  
24 fines collected under this chapter deposited in the account may be used  
25 only for the purposes of administering this chapter.

26 NEW SECTION. **Sec. 15.** In addition to the unprofessional conduct  
27 described in RCW 18.235.130, the following conduct, acts, and  
28 conditions constitute unprofessional conduct:

29 (1) Violating any of the provisions of this chapter or the rules  
30 adopted under this chapter;

31 (2) Suspension, revocation, or restrictions of certification  
32 through the certifying groups described in section 8 of this act;

33 (3) Committing any other act, or failing to act, in a manner



1 contrary to normal professional conduct or contrary to a standard  
2 generally expected of those practicing soil science or wetland science;

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

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

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

15 (7) Offering or accepting money, goods, or other favors as  
16 inducement to receive favorable consideration for a professional  
17 assignment or as an inducement to approve, authorize, or influence the  
18 granting of a professional assignment;

19 (8) Soliciting or accepting gratuities, directly or indirectly,  
20 from contractors, their agents, or other parties dealing with clients  
21 or employers in connection with work for which the holder is  
22 responsible;

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

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

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

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

34 NEW SECTION. **Sec. 16.** The director shall immediately suspend the  
35 certificate of a person who has been certified pursuant to RCW  
36 74.20A.320 by the department of social and health services as a person  
37 who is not in compliance with a child support order. If the person has

1 continued to meet all other requirements for a certificate under this  
2 chapter during the suspension, reissuance of the certificate must be  
3 automatic upon the director's receipt of a release issued by the  
4 department of social and health services stating that the holder is in  
5 compliance with the child support order. The procedure in RCW  
6 74.20A.320 is the exclusive administrative remedy for contesting the  
7 establishment of noncompliance with a child support order, and  
8 suspension of a certificate under this section, and satisfies the  
9 requirements of RCW 34.05.422.

10 NEW SECTION. **Sec. 17.** The uniform regulation of business and  
11 professions act, chapter 18.235 RCW, governs the issuance and denial of  
12 certificates, and the discipline of holders under this chapter.

13 **Sec. 18.** RCW 18.235.020 and 2008 c 119 s 21 are each amended to  
14 read as follows:

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

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

22 (i) Auctioneers under chapter 18.11 RCW;

23 (ii) Bail bond agents and bail bond recovery agents under chapter  
24 18.185 RCW;

25 (iii) Camping resorts' operators and salespersons under chapter  
26 19.105 RCW;

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

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

30 (vi) Court reporters under chapter 18.145 RCW;

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

33 (viii) Employment agencies under chapter 19.31 RCW;

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

35 (x) Limousines under chapter 46.72A RCW;

36 (xi) Notaries public under chapter 42.44 RCW;

1 (xii) Private investigators under chapter 18.165 RCW;  
2 (xiii) Professional boxing, martial arts, and wrestling under  
3 chapter 67.08 RCW;  
4 (xiv) Real estate appraisers under chapter 18.140 RCW;  
5 (xv) Real estate brokers and salespersons under chapters 18.85 and  
6 18.86 RCW;  
7 (xvi) Security guards under chapter 18.170 RCW;  
8 (xvii) Sellers of travel under chapter 19.138 RCW;  
9 (xviii) Timeshares and timeshare salespersons under chapter 64.36  
10 RCW;  
11 (xix) Whitewater river outfitters under chapter 79A.60 RCW; (~~and~~)  
12 (xx) Home inspectors under chapter 18.280 RCW; and  
13 (xxi) Soil scientists and wetland scientists under chapter 18.--  
14 RCW (the new chapter created in section 21 of this act).

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

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

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

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

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

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

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

29 (vii) The state geologist licensing board established in chapter  
30 18.220 RCW.

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

1           **Sec. 19.** 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 21 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. 20.** 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. 21.** Sections 1 through 17 of this act  
4 constitute a new chapter in Title 18 RCW.

5 NEW SECTION. **Sec. 22.** Sections 1 through 20 of this act take  
6 effect January 1, 2011.

7 NEW SECTION. **Sec. 23.** The director of the department of licensing  
8 may take the necessary steps to ensure that sections 1 through 20 of  
9 this act are implemented on January 1, 2011.

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