

HOUSE BILL REPORT

HB 1313

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to soil and wetland scientists.

Brief Description: Regulating soil science and wetland science professions.

Sponsors: Representatives Green, Sells, Reykdal, Morris and Kirby.

Brief History:

Committee Activity:

Business & Financial Services: 1/28/11, 2/4/11 [DP].

Brief Summary of Bill

- Establishes a state certification for soil scientists and wetland scientists.
- Makes it unlawful for a person to assume the title "soil scientist" or "wetland scientist" or a similar title without a state certification.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Blake, Hudgins, Hurst, Pedersen, Ryu and Stanford.

Minority Report: Do not pass. Signed by 5 members: Representatives Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Condotta, Parker and Rivers.

Staff: Jon Hedegard (786-7127).

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.

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.

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. One task of a wetland scientist is often to determine where a wetland begins and ends.

There are currently no state requirements for soil or wetland scientists.

In 2005 the Department of Licensing (DOL) was asked to perform a sunrise review of soil scientists. The DOL review recommended the regulation of soil scientists but did not specify the type of regulation. In 2007 the Legislature requested that the DOL conduct a sunrise review of soil and wetland scientists. In its sunrise review report, issued in January 2008, the DOL recommended that the Legislature pursue a title act of voluntary certification for soil and wetland scientists in Washington.

Summary of Bill:

It is unlawful for a person to use in connection with the person's name or otherwise assume or advertise the title "state certified soil scientist" or "state certified wetland scientist" unless the person has received the appropriate certification. This does not apply to use of the title "certified soil scientist" or "certified wetland scientist" by:

- officers and employees of the United States;
- persons on manuscripts or reports resulting from research at an academic institution; and
- persons teaching soil science, wetland science, or related physical, or natural sciences in an academic institution.

Board.

A seven member board for soil scientists and wetland scientists (board) is created. Three members must be experienced in the soil science profession, three members must be experienced in the wetland science profession, and one member must represent the public. Members are appointed by the Director of the Department of Licensing (Director). The terms of board members are three years, except that the term of several initial appointees to the board are shorter. The Director may remove a member for just cause. The Director must employ an executive director, subject to approval of the board. Board members must be compensated and reimbursed for travel expenses. The board may:

- adopt, amend, and rescind rules;
- establish the minimum qualification for applicants for certification;
- approve the method of administration for examinations;
- adopt or recognize examinations prepared by other organizations;
- set the time and place of examinations, with the approval of the Director;
- adopt standards of professional conduct and practice; and
- take disciplinary action for violations of this chapter.

Authority of the Director.

The Director may:

- adopt fees for certification and renewal of certification;
- administer certification examinations approved by the board; and
- make appointments or modify appointments to the board.

Applicants.

In order to become a state certified soil scientist, an applicant must:

- be of good moral and ethical character;
- pass an examination covering soil science subject matter;
- have graduated from a course of study from an accredited college or university with a four-year degree in soil science, or other physical or natural resources science curriculum considered; and
- have specific work experience.

In order to become a state certified wetland scientist, an applicant must:

- be of good moral and ethical character;
- pass an examination covering wetland science subject matter;
- have graduated from a course of study from an accredited college or university with a four-year degree in wetland science, biology, ecology, soil science, environmental science, hydrology, environmental studies, landscape architecture, or science curriculums considered satisfactory to the board. Qualifying education or training may be accepted in lieu of a four-year degree; and
- have specific work experience.

Prior to July 1, 2013, an applicant for a soil scientist certification or a wetland scientist certification does not need to take a written examination. A written examination is required of applicants after July 1, 2013. The board must determine the content, scope, and grading process of the examination.

Applicants from another state may be issued a certificate by the Director if they meet the applicable statutory provisions for their certificate and any rules adopted by the board.

Continuing Education.

The board must require certified persons to obtain continuing professional development or continuing education. The board may require certificate holders to demonstrate maintenance of knowledge and skills as a condition of certificate renewal, including peer review of work products.

Issuance and Renewals of Certificates.

The Uniform Regulation of Business and Professions Act (URBPA) governs the issuance and denial of certificates, and the discipline of holders. Certificates issued must be renewed periodically.

Fees and Fines.

The application fee for initial certification must be determined by the Director. The fee must be in an amount so that the costs of certification are fully borne by the soil scientists and wetland scientists. All receipts from fees and fines collected must be deposited into the Business and Professions Account. Expenditures from these fees and fines may be used only

for the purposes of administering the regulation of certified soil scientists and certified wetland scientists.

Prohibited Practices.

The following conduct is unprofessional conduct:

- violating the URBPA;
- violating statutes applicable to a certified soil scientist or certified wetland scientist;
- acting in a manner contrary to normal professional conduct or contrary to a standard generally expected of those practicing soil science or wetland science;
- failing to respond to inquiries from clients or other professionals in a prudent manner;
- modifying another holder's work without notifying that holder;
- offering or accepting money, goods, or other favors as inducement to approve, authorize, or influence the granting of a professional assignment;
- soliciting or accepting gratuities from third parties in connection with work for which the holder is responsible;
- using privileged information to make a personal profit;
- requesting, proposing, or accepting professional commissions on a contingent basis under circumstances in which the holder's integrity may be compromised;
- falsifying records, making false statements, or intimidating or slandering professional peers;
- willfully attempting to interfere with a Director's investigation by falsifying records, making false statements, or intimidating or influencing witnesses; or
- willfully attempting to suborn another person to violate the law, public policy, or his or her code of professional ethics.

Other.

Retaining the services of a certified soil scientist or a certified wetland scientist to provide analysis or advice on soil science or wetland science is not:

- admissible in an action for damages or negligence; or
- evidence of noncompliance in any action by state, local, or federal governments to enforce an order or regulation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011, except for section 3, relating to the use of titles, sections 11 through 14, relating to issuance of certificates, education and continuing education requirements, and certificate fees, and sections 16 through 19, relating to professional conduct standards and discipline of certificate holders, which take effect July 1, 2013.

Staff Summary of Public Testimony:

(In support) This is a bill that deals with the scope of practice of certain types of professions. There has been quite a bit of hard work on this subject over the last several years. The

original bill was controversial. The discussion around the sunrise reviews and resulting changes have improved the bill. It is important that a person, business, or governments can rely upon information received from a soil or wetland scientist. A state certification will set a standard for the work performed by a soil or wetland scientist. Legislation in 2010 passed the Senate. The current bill is based on the 2010 bill but some changes have been made to address concerns expressed by opponents of the 2010 bill. The proposal allows for a self-funded certification program. It allows for complaints to be brought to a regulatory body. The ability for an aggrieved party to bring a complaint may help avoid litigation. It is often imperative to use a trained soil or wetland scientist. It is important to get technically correct reports regarding wetlands and soils. It is hard to correct an erroneous evaluation. The public needs to be able to determine if a person is qualified to do the job and is accountable for their work. The conservation districts of the state view this bill as an important consumer protection bill. The bill protects the public by requiring education, training, and continuing education for soil and wetland scientists. National organizations provide certification but the primary purpose of those organizations is to serve their members. The purpose of a state program is to protect the public. The bill ensures professional services will be delivered by the certified soil and wetland scientist. Years ago, the proposal was to license soil scientists. There were concerns about licensure so the current bill uses a certification process. There should be basic requirements to ensure that a person is capable of performing the work of a soil or wetland scientist. A national organization does not provide recourse for a consumer or business. Soil and wetland scientists have more targeted education and expertise than geologists. Soil and wetland scientists look at smaller areas and issues than geologists. An incorrect wetland determination may stop development of a parcel of land. Every local government has a critical areas ordinance. There is no state or local requirement regarding the people who will make determinations regarding those critical areas. There is value in certification.

(Opposed) Wetland scientists can be licensed under the broad definitions in the geologist licensure law. The bill does not clarify how the certifications interact with the existing licenses. There appear to be issues with existing licenses and there is no guidance on how the differences are resolved. The trend is to consolidate government. This does not appear to be a useful place to consider expanding government. Many of the practices are covered today by existing boards and commissions. The bill sets up future battles over scope of practice. Many proponents have expressed their goal as licensure. The current bill does not resolve many outstanding issues. The unintended consequences that will flow from passing this bill are significant. The public will be more confused about who is authorized to provide various services. While certification is not required by the bill, that will be the eventual outcome. Certification will add costs. The fiscal note is significant. Licensure is the only good option. Certification is not mandatory and will not stop bad actors. Certificates will be expensive. If there is a shortfall in the number of people who hold certificates, then the costs will go even higher. This is something that people in the industry cannot afford and the state cannot afford. Government employees are exempt under the bill which means some of the conflicts in determinations will not be resolved. The public will be confused by the difference in state certification and certification by national organizations. Many people will choose to go without the state certificate. Passing the bill may impede, not aid, eventual licensure of soil and wetland scientists.

Persons Testifying: (In support) Representative Green, prime sponsor; Allen T. Miller, Soil and Wetland Scientists; Janine Smith, Solid Designs; Abbe Rolnick; John Larson, Washington Association of Conservation Districts; Dan Ufnar and Toby Rogers, Washington Society of Professional Soil Scientists; Karla Van Leaven and Janet Cray, Aqua-Terr Systems, Incorporated; Jim Wiggins; Lisa Palazzi, Pacific Rim Soil and Water; and Garth Cray.

(Opposed) Steve Neugebauer, SNR Company; James Curry, Architects and Engineers Legislative Council; Jerry Smedes, Northwest Environmental Business Council; and A.J. Bredberg, B&A, Incorporated.

Persons Signed In To Testify But Not Testifying: None.