

SENATE BILL REPORT

SB 5225

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 3, 2011
Ways & Means, February 17, 2011

Title: An act relating to soil and wetland scientists.

Brief Description: Regulating soil science and wetland science professions.

Sponsors: Senators Murray, Kohl-Welles and Ranker.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/25/11, 2/01/11, 2/03/11
[DP-WM, DNP].
Ways & Means: 2/17/11 [w/oRec, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.
Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Ingrid Mungia (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.
Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Parlette, Ranking Minority Member Capital; Brown, Conway, Fraser, Kastama, Keiser, Kohl-Welles, Pflug, Regala and Rockefeller.

Minority Report: Do not pass.
Signed by Senators Holmquist Newbry, Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.
Signed by Senators Baumgartner, Baxter and Hewitt.

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.

Staff: Devon Nichols (786-7716)

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.

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 scientists is to determine where a wetland begins and ends.

There are currently no state requirements for soil or wetland scientists. However, there are nationally recognized organizations that administer certification programs for both soil and wetland scientists.

The Soil Science Society of America (SSSA) has established two professional levels of soil scientists. To be certified as an Associate Professional Soil Scientist through the SSSA, an individual is required to: have a bachelor's degree in soil science or a closely related field, have passed the Fundamentals of Soil Science Exam, and subscribe to the Code of Ethics. To be certified as a Professional Soil Scientist through the SSSA, an individual is required to, in addition to meeting the requirements for an associate certificate: have passed the Professional Practice Examination, have a minimum of five years work experience in the field for those with a bachelor's degree, and have a minimum of three years work experience in the field for those with a Ph.D. or master's degree.

For wetland scientist certification, the Society of Wetlands Scientists has also established two levels of membership. To be certified as a Wetland Professional in Training (WPIT), an individual is required to: have a bachelor's degree that involved the completion of specific course work, competency based on verifiable educational achievement, provide statements in favor of the applicant's membership from five references, and provide acknowledgment of the Code of Ethics. To be certified as a Professional Wetland Scientist, in addition to meeting the requirements for a WPIT Certificate, an individual must have: an additional 15 semester hours of wetland course work, a minimum of five years field experience, and competency based on verifiable work experience.

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 a title act of voluntary certification of soil and wetland scientists.

Summary of Bill: Soil scientists and wetland scientists must be certified. It is unlawful for a person to use, assume, or advertise the title state certified soil scientist or state certified wetland scientist unless that person has received the appropriate certification.

A seven-member board for soil scientists and wetland scientists is created. Three members of the board must be experienced with the soil science profession, three members must be experienced with the wetland science profession, and one member must represent the public. The board has the authority to adopt rules, establish the minimum qualifications for applicants for certification, approve the method of administration for annual examinations, adopt or recognize examinations prepared by other organizations, set the time and place of examinations, adopt standards of professional conduct and practice, and take disciplinary action for violations. The board must require certificate holders 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.

The Director may adopt fees, administer certification examinations approved by the board, issue certificates to any applicant who had met all of the requirements for certification, renew certificates, and make appointments or modify appointments to the board.

Before July 1, 2013, to become a state certified soil scientist, an applicant must:

- be of good moral and ethical character as attested to by letters of reference;
- 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 satisfactory by the board; and
- have a documented record of a minimum of five years of experience, obtained after completion of the majority of the academic requirements with at least two years of the experience gained under the supervision of a soil scientist certified or credentialed in this or any other state.

After July 1, 2013, to become a state certified soil scientist, an applicant must:

- be of good moral and ethical character as attested to by letters of reference;
- pass an examination developed or accepted by the board 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 satisfactory by the board; and
- have a documented record of a minimum of five years of experience, obtained after completion of the majority of the academic requirements with at least two years of the experience gained under the supervision of a soil scientist certified or credentialed in this or any other state.

Before July 1, 2013, to become a state certified wetland scientist, an applicant must:

- be of good moral and ethical character as attested to by letters of reference;
- 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 other biological physical or natural resources science curriculums considered by the board; and
- have a documented record of a minimum of five years of professional experience, obtained after completion of the majority of the academic requirements with at least two years of the experience gained under the supervision of a wetland scientist certified or credentialed in this or any other state.

After July 1, 2013, to become a state certified wetland scientist, an applicant must:

- be of good moral and ethical character as attested to by letters of reference;
- pass an examination developed or accepted by the board 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 other biological physical or natural resources science curriculums considered by the board; and
- have a documented record of a minimum of five years of professional experience, obtained after completion of the majority of the academic requirements with at least two years of the experience gained under the supervision of a wetland scientist certified or credentialed in this or any other state.

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 board.

Conduct, acts, and conditions that constitute unprofessional conduct are established. These include violating the provisions of the act or the rules adopted; committing an act contrary to normal professional conduct; 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 monies, 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; falsifying records, making false statements; 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.

The issuance and denial of certificates is governed by the Uniform Regulations of Business and Professions Act.

Appropriation: None.

Fiscal Note: Available.

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

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony (Labor, Commerce & Consumer Protection): PRO: This bill is improved from last session. It gives accountability to the profession. In other

professions a person can consult with DOL and see what professional credentials are with the profession. However, with wetland scientists there is no where to go and look and see what the process is in the profession. This is a necessary step and a consumer protection issue to protect those land owners. State certification of soil and wetland science is necessary to maintain professionalism. Certification will save money in the long run for both the government and the public. We want certification to allow the state to have oversight on the certification program. There is no state oversight currently, only national certification. We are not trying to overlap into geologic or hydro-geologic professions. There is harm being done, especially in the wetland science, and there is no recourse for the public to complain in the state. We would love to have a practice act, but we would be happy with a title act. This a consumer protection bill and will enable us to regulate the bad actors in the state.

CON: This bill seems to ignore the Geologist Licensing Board and all of the different geologic disciplines this board regulates and has established standards for already, especially the specialty science of hydrogeology, which is the study of surface and ground water. This bill carves out too many areas of practice. It has been my experience that working with licensed professionals rather than the certified consultants is preferred in order to complete the type and kind of data collection and reporting necessary for thorough and accurate assessments of conditions found on my clients properties. This is a certification bill, it is voluntary. Unless we have a mandatory licensure, there is no protection for the public. There are unintended consequences achieved by this program. State, local, and federal officials reviewing and evaluating reports do not need to be certified. This bill will give considerable confusion in the market place and cause unfair competitive advantages. Licensure would be better than certification. There are still technical issues with this bill, especially in section 2(7)(b). This bill will cause more friction between the professions.

OTHER: This bill is part of the maturing of the professions. The bill has taken care of the concerns we had last year.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Allen Miller, Soil & Wetland Scientists; Karla Van Leaven, ATSI; Steven Neugebauer, SNR Company; Lisa Palozzi, Palozzi Soil & Water; John Larson, Washington Association of Conservation Districts; Toby Rodgers, Washington Society of Professional Soil Scientists; Abbe Rolnick, business owner.

CON: AJ Biedberg, B&A Inc.; Jerry Smedes, NW Environmental Business Council; Jon Simpson, JWS Design, Inc.; James Curry, Architects & Engineers Legislative Counsel; Norman MacLeod, consultant & citizen.

OTHER: Tom Clingman, Department of Ecology.

Staff Summary of Public Testimony (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A.