

State of Washington 60th Legislature 2008 Regular Session  
By Representatives Hunt, Wood, and Conway

AN ACT Relating to soil and wetland scientists; amending RCW 18.235.020; adding a new chapter to Title 18 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature finds that in order to protect life, property, and health, and to promote public welfare, it is in the public interest to regulate soil science and wetland science as professions by establishing minimum standards of ethical conduct and professional responsibility and by establishing professional education and experience requirements for those persons representing to the public that they are soil scientists or wetland scientists certified by the state.

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

(1) "Advisory committee" means the advisory committee created under section 4 of this act.

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department of licensing.

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

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

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

(7) "Soil science" means the science that:

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

(i) Soil physics, which is the study of water and heat transfer through soil;

(ii) Soil chemistry and mineralogy;

(iii) Soil biochemistry;

(iv) Soil fertility; and

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

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

(i) Management of water quantity by utilizing infiltration and percolation capabilities on a site or soil specific basis;

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

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

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

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

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

(9) "Wetland" means an area that:

(a) Predominantly supports wetland vegetation, and

(b) Has hydric soils, and

(c) Has wetland hydrology,

as defined (and as amended) in RCW 90.58.380

(10) "Wetland science" means the science that:

(a) Involves the study of various aspects of wetland systems and includes but is not limited to the following focused subject areas:

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

ii) Wetland mitigation, which is a plan that describes and provides for compensation to offset unavoidable wetland or wetland buffer losses as is prescribed or required by federal, state or local regulations;

(iii) Wetland classification, which is a process that defines and groups wetland types into discrete ecologically or geomorphically based units which are used to create management plans or to rate a wetland;

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

(v) Wetland ecology, which is the study of the interrelationship of organisms and their wetland environments; and

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

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

(ii) Assessing wetland type for purposes of compensation or mitigation;

(11) "Wetland scientist" means a person who, by reason of the person's knowledge of wetland science, mathematics, the environment, and the supporting physical and life sciences, acquired by education and practical experience, has met the qualifications established under this chapter, and has been issued a certificate as a wetland scientist by the director.

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

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

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

(b) Persons using the title of soil scientist or wetland scientist on manuscripts or reports resulting from research at academic institutions; and

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

NEW SECTION. **Sec. 4.** (1) An advisory committee is created to provide recommendations to the director concerning the administration of this chapter. The advisory committee consists of seven members appointed by the director. Three members must be conversant with and experienced in the soil science profession; three members must be conversant with and experienced in the wetland science profession, and one member must represent the public. Subsequent to the initial appointments, all members except for the public member must be certified under this chapter. Each member of the advisory committee must be a resident of the state.

(2) The director shall appoint to the advisory committee individuals from across the state, and from both public and private sectors, utilizing geographic and experiential diversity as much as possible. The terms of the members of the advisory committee shall be three years, except that the initial appointees to the advisory committee serve the following terms to be specified by the director: Two members for one year, two members for two years, and three members for three years. No member of the advisory committee is eligible for reappointment to a third consecutive term, but any member is eligible for reappointment after an absence of at least one year from the advisory committee. Any member who is reappointed following an absence of at least one year from the advisory committee is eligible for reappointment to a second consecutive term and is again eligible for reappointment after an absence of at least one year from the advisory committee.

(3) Members of the advisory committee serve until replaced by a subsequent appointment even if their appointment exceeds the length of their term, but may resign prior to completing the term of appointment. The director may for just cause remove an advisory committee member. The director shall appoint a new member to fill any vacancy on the advisory committee for the remainder of the unexpired term. Members of the advisory committee may not be compensated, but shall be reimbursed for expenses incurred in accordance with RCW

43.03.050 and 43.03.060. Three members constitute a quorum of the committee.

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

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

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

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

(3) Performing other duties deemed necessary by the director.

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

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

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

(3) To establish the minimum qualifications for applicants for certification as provided by chapter 18.-- RCW (sections 1 through 18 of this act);

(4) To approve the method of administration for examinations required by chapter 18.-- RCW (sections 1 through 18 of this act) or by rule, to adopt or recognize examinations prepared by other organizations, and to set the time and place of examinations.

(5) To adopt standards of professional conduct and practice.

NEW SECTION. **Sec. 7.** (1) To become a certified soil scientist or certified wetland scientist, an applicant must meet the requirements of this section.

(2) An applicant who applies for soil scientist or wetland scientist certification before July 1, 2011, is considered qualified for certification, without further written examination, if the applicant meets the standards described in subsection (3)(a), (b), and (c) of this section.

(3) In order to become a certified soil scientist or a certified wetland scientist, an applicant must:

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

(b) Have graduated from a course of study in soil science or wetland science satisfactory to the director or satisfy educational equivalents determined by the director;

(c) Have a documented record of a minimum of five years of experience obtained after the completion of the academic requirements specified in this section, in soil science or wetland science work of a character satisfactory to the director, demonstrating that the applicant is qualified to assume responsible charge of such work upon certification as a soil scientist or wetland scientist. At least three years of the experience must be gained under the supervision or direction of a soil scientist or wetland scientist credentialed in this or any other state, or under the supervision or direction of others who, in the opinion of the director, are qualified to have responsible charge of soil science or wetland science work;

(d) Pass an examination covering the fundamentals and practice of soil science or wetland science prescribed or accepted by the director; and

(e) Meet other general requirements established by the director under its authority under this chapter.

NEW SECTION. **Sec. 8.** (1) Experience in professional practice as required under section 7(3)(c) of this act, of a character acceptable to the director and acquired prior to July 1, 2010, is acceptable if the experience:

(a) Was acquired under the direct supervision or direction of a soil scientist or wetland scientist who meets the educational and experience requirements for certification under this chapter, or who is credentialed in another state that has requirements that are substantially similar to this chapter; or

(b) Would constitute responsible charge of professional soil science or wetland science work, as determined by the director;

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

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

NEW SECTION. **Sec.10.** Examinations of applicants for certification, when required, shall be held at such times and places as determined by the director. The scope of the examination must be directed to an applicant's ability to practice soil science or wetland science. An applicant failing an examination may apply for reexamination. Subsequent examinations will be granted upon payment of a fee to be determined by the director as provided in RCW 43.24.086.

NEW SECTION. **Sec.11.** (1) The director shall issue a certificate to any applicant who has satisfactorily met all of the requirements of this chapter for certification as a soil scientist or wetland scientist. The certificate must show the full name of the holder, have a unique certification number, and be signed by the director. The issuance by the director of a certificate to an individual is prima facie evidence that the person is entitled to all the rights and privileges of a certified soil scientist or certified wetland scientist while the certificate remains unrevoked or unexpired.

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

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

NEW SECTION. **Sec.13.** The director shall require persons certified under this chapter to obtain continuing professional development or continuing education. The director may also require these certificate holders to demonstrate maintenance of knowledge and skills as a condition of certificate renewal, including peer review of work products and periodic reexamination.

NEW SECTION. **Sec.14.** Certificates issued under this chapter shall be renewed periodically on a date to be set by the director in conformance with RCW 43.24.140. Any holder who fails to pay the prescribed fee within ninety days after expiration of their certificate shall have their certificate classified as invalid until the holder pays a renewal fee equal to the current fee plus an amount equal to one year's renewal fee. Any certificate that has been expired

for five years or more may be reinstated in conformance with rules adopted by the director. Reinstatement conditions may include demonstration of continued practice, or competency in the practice of soil science or wetland science, or completion of training.

NEW SECTION. **Sec.15.** All receipts from fees and fines collected under this chapter must be deposited into the business and professions account described in RCW 43.24.150. Expenditures from the fees and fines collected under this chapter deposited in the account may be used only for the purposes of administering this chapter.

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

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

(2) Committing any other act, or failing to act, in a manner contrary to normal professional conduct or contrary to a standard generally expected of those practicing soil science or wetland science;

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

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

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

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

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

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

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

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

(11) Willfully attempting to suborn another person to violate the law, public policy, or their code of professional ethics.

NEW SECTION. **Sec.17.** The director shall immediately suspend the certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a child support order. If the person has continued to meet all other requirements for a certificate under this chapter during the suspension, reissuance of the certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the holder is in compliance with the child support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a certificate under this section, and satisfies the requirements of RCW 34.05.422.

NEW SECTION. **Sec.18.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs the issuance and denial of certificates, and the discipline of holders under this chapter.

**NEW SECTION Sec.19.** RCW 18.235.020 and 2007 c 256 s 12 are each amended to read as follows:

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

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

- (i) Auctioneers under chapter 18.11 RCW;
- (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
- (iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;
- (iv) Commercial telephone solicitors under chapter 19.158 RCW;
- (v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;
- (vi) Court reporters under chapter 18.145 RCW;
- (vii) Driver training schools and instructors under chapter 46.82 RCW;
- (viii) Employment agencies under chapter 19.31 RCW;
- (ix) For hire vehicle operators under chapter 46.72 RCW;
- (x) Limousines under chapter 46.72A RCW;
- (xi) Notaries public under chapter 42.44 RCW;
- (xii) Private investigators under chapter 18.165 RCW;
- (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- (xiv) Real estate appraisers under chapter 18.140 RCW;
- (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- (xvi) Security guards under chapter 18.170 RCW;
- (xvii) Sellers of travel under chapter 19.138 RCW;

(xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW; and

(xix) Whitewater river outfitters under chapter 79A.60 RCW.

(x) Soil scientists and wetland scientists under this chapter (chapter 18.\_\_\_\_RCW).

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.20.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.21.** Sections 1 through 18 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. **Sec.22.** Sections 1 through 21 of this act take effect January 1, 2011.

NEW SECTION. **Sec.23.** The director of the department of licensing may take the necessary steps to ensure that sections 1 through 21 of this act are implemented on January 1, 2011.

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