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**SENATE BILL NO. 61**

Offered January 9, 2002

Prefiled December 28, 2001

*A BILL to amend and reenact § 54.1-300, as it is currently effective and as it shall become effective, §§ 54.1-2200 through 54.1-2203, 54.1-2207 and 54.1-2208 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2206.1 and 54.1-2206.2, relating to the Department of Professional and Occupational Regulation; Board for Professional Soil Scientists and Wetland Professionals; penalty.*

Patron—Watkins

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 54.1-300, as it is currently effective and as it shall become effective, §§ 54.1-2200 through 54.1-2203, 54.1-2207 and 54.1-2208 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 54.1-2206.1 and 54.1-2206.2 as follows:**

§ 54.1-300. (Effective until July 1, 2003) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation which is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery Board, Real Estate Appraiser Board, Real Estate Board and Virginia Board for Asbestos and Lead.

§ 54.1-300. (Effective July 1, 2003) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

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"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land

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59 Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology,  
60 Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists,  
61 Board for Opticians, Board for Professional Soil Scientists *and Wetland Professionals*, Board for Waste  
62 Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery  
63 Board, Real Estate Appraiser Board, Real Estate Board and Virginia Board for Asbestos, Lead, and  
64 Home Inspectors.

65 § 54.1-2200. Definitions.

66 As used in this chapter, unless the context requires a different meaning:

67 "Board" means the Board for Professional Soil Scientists *and Wetland Professionals*.

68 "Department" means the Department of Professional and Occupational Regulation.

69 "Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to  
70 become certified.

71 "*Eligible wetland professional*" means a person who possesses the qualifications specified in this  
72 chapter to become certified.

73 "Practice of soil evaluation" means the evaluation of soil by accepted principles and methods  
74 including, but not limited to, observation, investigation, and consultation on measured, observed and  
75 inferred soils and their properties; analysis of the effects of these properties on the use and management  
76 of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

77 "*Practice of wetland delineation*" means the delineation of wetlands by accepted principles and  
78 methods including, but not limited to, observation, investigation, and consultation on soil, vegetation,  
79 and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and  
80 interpretive drawings.

81 "Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface  
82 which are capable of supporting plant life and have properties caused by the combined effects, as  
83 modified by topography and time, of climate and living organisms upon parent materials.

84 "Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and  
85 predicting their suitability for and response to various uses.

86 "Soil science" means the science dealing with the physical, chemical, mineralogical, and biological  
87 properties of soils as natural bodies.

88 "Soil scientist" means a person having special knowledge of soil science and the methods and  
89 principles of soil evaluation as acquired by education and experience in the formation, description and  
90 mapping of soils.

91 "Virginia certified professional soil scientist" means a person who possesses the qualifications  
92 required for certification by the provisions of this chapter and the regulations of the Board and who has  
93 been granted certification by the Board.

94 "*Virginia certified professional wetland delineator*" means a person who possesses the qualifications  
95 required for certification by the provisions of this chapter and the regulations of the Board and who is  
96 granted certification by the Board.

97 "*Wetland delineation*" means delineating wetland boundaries in accordance with prevailing state and  
98 federal regulatory guidance and describing wetland types.

99 "*Wetland professional*" means a person having special knowledge of wetland science and the  
100 methods and principles of wetland delineation as acquired by education and experience in the  
101 formation, description and mapping of wetlands.

102 "*Wetland science*" means the science dealing with the physical, chemical, and biological properties  
103 of wetland systems integrated through ecological and morphological relationships.

104 "*Wetlands*" means wetlands as defined in § 62.1-44.3 and § 28.2-1300.

105 § 54.1-2201. Exceptions.

106 The certification ~~program~~ programs set forth in this chapter is voluntary and shall not be construed  
107 to prohibit:

108 1. The practice of soil evaluation *or wetland delineation* by individuals who are not certified soil  
109 scientists *or certified professional wetland delineators* as defined in this chapter;

110 2. The work of an employee or a subordinate of a certified soil scientist or of an individual who is  
111 practicing soil evaluation without being certified; ~~or~~

112 3. *The work of an employee or a subordinate of a certified professional wetland delineator or of an*  
113 *individual who is practicing wetland delineation without being certified; or*

114 ~~3.~~ 4. The practice of any profession or occupation which is regulated by another regulatory board  
115 within the Department of Professional and Occupational Regulation.

116 § 54.1-2202. Board; membership; quorum.

117 Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists *and Wetland*  
118 *Delineators* shall be composed of ~~five~~ *nine* members as follows: four certified professional soil  
119 scientists, *four certified professional wetland delineators* and one citizen member. Of the professional  
120 *soil scientist* members, one shall have experience in soil mapping and classification, one shall have

experience in soil suitability and land use, one shall have experience in teaching and research in soil science and one shall have experience with environmental protection regulations. *Of the wetland professional members, two shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science and one shall have experience with natural resource regulations.* The terms of the members shall be four years. *For the initial appointments of the wetland professionals the terms shall be as follows: one member shall serve a term of two years, two members shall serve a term of three years, and one member shall serve a term of four years. Initial appointments of wetland professional members to the Board shall not be certified professional wetland delineators but shall have a record of at least ten years of experience in wetland delineation.*

The Board shall annually elect a chairman from its membership. ~~Three members of the Board, two of whom shall be soil scientists, shall constitute a quorum.~~ *Six Board members, consisting of three soil scientists and three wetland delineators, shall constitute a quorum.*

The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.

*The Governor shall select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor shall notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.*

§ 54.1-2203. Eligibility for certification.

A. Any person practicing or offering to practice as a soil scientist in this Commonwealth may submit to the Board evidence of qualification to be certified as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

B. Any person practicing or offering to practice as a wetland professional in this Commonwealth may submit to the Board evidence of qualification to be certified as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

C. Any individual who allows his certification to lapse by failing to renew the certificate or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of satisfactory evidence that he is practicing in a competent manner and upon payment of the prescribed fee.

§ 54.1-2206.1. Requirements for application for professional wetland delineator certification.

*The Board may certify any applicant as a Virginia certified professional wetland delineator who has submitted satisfactory evidence verified by affidavits that the applicant:*

- 1. Is eighteen years of age or older;*
- 2. Is of good moral character; and*
- 3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.*

§ 54.1-2206.2. Requirements for professional wetland delineator certification.

A. In order to be certified as a professional wetland delineator, an applicant shall achieve a score acceptable to the Board on an examination, with a field practicum, in the principles and practice of wetland delineation and satisfy one of the following criteria:

- 1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, ecology, soil science, geology, hydrology or any related biological, physical or natural science curriculum that has been approved by the Board; have successfully completed a course of instruction, in state and federal wetland delineation methods, that has been approved by the Board; and have at least four years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional wetland delineator; or*

- 2. Have a record of at least six years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional wetland delineator; or*

- 3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist.*

B. Notwithstanding the requirements in subsection A, the requirement for a reference from and supervision by a certified professional wetland delineator shall be waived for the first two years of the program.

182 § 54.1-2207. Unprofessional conduct.

183 Any professional soil scientist *or wetland delineator* who is certified as provided in this chapter shall  
184 be considered guilty of unprofessional conduct and subject to disciplinary action by the Board, if he:

185 1. Obtains his certification through fraud or deceit;

186 2. Violates or cooperates with others in violating any provision of this chapter, the Code of  
187 Professional Ethics and Conduct or any regulation of the Board;

188 3. Performs any act likely to deceive, defraud or harm the public;

189 4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation *or*  
190 *wetland delineation*; or

191 5. Is convicted of a felony.

192 § 54.1-2208. Unlawful representation as a certified professional soil scientist or wetland delineator.

193 A. No person shall represent himself as a certified professional soil scientist unless he has been so  
194 certified by the Board. Any person practicing or offering to practice soil evaluation within the meaning  
195 of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a  
196 certified professional soil scientist without holding such a certificate from the Board shall be guilty of a  
197 Class 1 misdemeanor.

198 B. *No person shall represent himself as a certified professional wetland delineator unless he has*  
199 *been so certified by the Board. Any person practicing or offering to practice wetland delineation within*  
200 *the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents*  
201 *himself as a certified professional wetland delineator without holding such a certificate from the Board*  
202 *shall be guilty of a Class 1 misdemeanor.*