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SENATE BILL NO. 1265

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 54.1-2200, 54.1-2201, 54.1-2202, 54.1-2203, 54.1-2205, 54.1-2206, 54.1-2207, and 54.1-2208 of the Code of Virginia and to repeal § 54.1-2204 of the Code of Virginia, relating to professional soil scientists; licensure.*

Patrons—Vogel, Hanger and Marsden

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2200, 54.1-2201, 54.1-2202, 54.1-2203, 54.1-2205, 54.1-2206, 54.1-2207, and 54.1-2208 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2200. Definitions.

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

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

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

"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become ~~certified~~ *licensed*.

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

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

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

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

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

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

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

"Virginia ~~certified~~ *licensed* professional soil scientist" means a person who possesses the qualifications required for ~~certification~~ *licensure* by the provisions of this chapter and the regulations of the Board and who has been granted ~~certification~~ *a license* by the Board.

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

"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

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

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

"Wetlands" means the same as that term is defined in §§ 62.1-44.3 and 28.2-1300.

§ 54.1-2201. Exceptions.

A. The certification ~~programs~~ *program for wetland delineation* set forth in this chapter ~~are~~ *shall be* voluntary and shall not be construed to prohibit:

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

59 2. The work of an employee or a subordinate of a ~~certified~~ *licensed* soil scientist ~~or of an individual~~
60 ~~who is practicing soil evaluation without being certified;~~

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

63 4. The work of any professional engineer, landscape architect, or land surveyor as defined by
64 § 54.1-400 in rendering any of the services that constitute the practice of wetland delineation or the
65 practice of soil evaluation; or

66 5. The practice of any profession or occupation which is regulated by another regulatory board
67 within the Department of Professional and Occupational Regulation.

68 B. Nothing in this chapter shall authorize an individual to engage in the practice of engineering, the
69 practice of land surveying or the practice of landscape architecture, unless such individual is licensed or
70 certified pursuant to Chapter 4 (§ 54.1-400 et seq.) of this title.

71 § 54.1-2202. Board; membership; quorum.

72 Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists and Wetland
73 Professionals shall be composed of seven members as follows: three ~~certified~~ *licensed* professional soil
74 scientists, three certified professional wetland delineators and one citizen member. The professional soil
75 scientist members shall have experience in at least one of the following areas (i) soil mapping and
76 classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv)
77 environmental protection regulations. Of the wetland professional members, one shall have experience in
78 wetland delineation and description, one shall have experience in teaching and research in wetland
79 science and one shall have experience with natural resource regulations. For the initial appointments of
80 the wetland professionals the terms shall be as follows: one member shall serve a term of two years, one
81 member shall serve a term of three years, and one member shall serve a term of four years. Initial
82 appointments of wetland professional members to the Board shall not be certified professional wetland
83 delineators but shall have a record of at least ten years of experience in wetland delineation. Subsequent
84 terms of the members shall be for four years.

85 The Board shall annually elect a chairman from its membership. Four board members, consisting of
86 two soil scientists and two professional wetland delineators, shall constitute a quorum.

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

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

96 § 54.1-2203. Eligibility for certification as wetland delineator.

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

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

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

110 § 54.1-2205. License required; application; requirements for licensure; continuing education.

111 A. *No person shall engage in, or offer to engage in, the practice of soil evaluation in the*
112 *Commonwealth unless he has been licensed under the provisions of this chapter.*

113 B. In order to be ~~certified~~ *licensed* as a professional soil scientist, an applicant shall ~~achieve~~:

114 1. *Submit satisfactory evidence verified by affidavits that the applicant:*

115 a. *Is 18 years of age or more;*

116 b. *Is of good moral character; and*

117 c. *Has successfully completed such educational and experiential requirements as are required by this*
118 *chapter and the regulations of the Board.*

119 2. *Achieve a score acceptable to the Board on an examination in the principles and practice of soil*
120 *evaluation and satisfy one of the following criteria:*

121 4.a. Hold a bachelor's degree from an accredited institution of higher education in a soils curriculum
 122 which has been approved by the Board and have at least four years of experience in soil evaluation, the
 123 quality of which demonstrates to the Board that the applicant is competent to practice as a professional
 124 soil scientist; or

125 2.b. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience
 126 in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to
 127 practice as a professional soil scientist; or

128 3.c. Have a record of at least eight years of experience in soil evaluation, the quality of which
 129 demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

130 4.d. Have at least four years of experience in soil science research or as a teacher of soils curriculum
 131 in an accredited institution of higher education which offers an approved four-year program in soils and
 132 at least two years of soil evaluation experience, the quality of which demonstrates to the Board that the
 133 applicant is competent to practice as a professional soil scientist.

134 B. Notwithstanding the requirements in subsection A, any person appointed to serve on the Board as
 135 a professional soil scientist member prior to July 1, 1991, shall be deemed certified for the purposes of
 136 this chapter.

137 C. The Board shall establish by regulation requirements for continuing education as a prerequisite to
 138 renewal of a license issued under this chapter, not to exceed eight contact hours per year.

139 D. Individuals applying for a license as a professional soil scientist between January 1, 2010, and
 140 January 1, 2013, who (i) have been certified as professional soil scientists by the Board or (ii) have
 141 achieved a score acceptable to the Board on the examination required by this section, shall be licensed
 142 by the Board if all other requirements of this chapter or Board regulations have been met, unless an
 143 applicant is found by the Board to have engaged in any act that would constitute grounds for
 144 disciplinary action.

145 § 54.1-2206. Waiver of examination.

146 A. The Board may waive the requirement for examination pursuant to § 54.1-2205 upon written
 147 application from an individual who holds an unexpired certificate *or license*, or its equivalent, issued by
 148 a regulatory body of another state, territory or possession of the United States and is not the subject of
 149 any disciplinary proceeding before such regulatory body which could result in the suspension or
 150 revocation of his certificate *or license*, if such other state, territory or possession recognizes the
 151 certificate *license* issued by the Board.

152 B. The Board shall waive the requirement for examination pursuant to § 54.1-2206.2 upon the written
 153 application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory
 154 body of another state, territory or possession of the United States or has been provisionally certified
 155 under the U.S. Army Corps of Engineers Wetland Delineator Certification Program of 1993 and is not
 156 the subject of any disciplinary proceeding before such regulatory body, which could result in the
 157 suspension or revocation of his certificate.

158 § 54.1-2207. Unprofessional conduct.

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

- 162 1. Obtains his certification *or license* through fraud or deceit;
- 163 2. Violates or cooperates with others in violating any provision of this chapter, the Code of
 164 Professional Ethics and Conduct or any regulation of the Board;
- 165 3. Performs any act likely to deceive, defraud or harm the public;
- 166 4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation or
 167 wetland delineation; or
- 168 5. Is convicted of a felony.

169 § 54.1-2208. Unlawful representation as a licensed professional soil scientist or certified wetland
 170 delineator.

171 A. No person shall represent himself as a ~~certified~~ *licensed* professional soil scientist unless he has
 172 been so ~~certified~~ *licensed* by the Board. Any person practicing or offering to practice soil evaluation
 173 within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead,
 174 represents himself as a ~~certified~~ *licensed* professional soil scientist without holding such a ~~certificate~~ *a*
 175 *license* from the Board shall be guilty of a Class 1 misdemeanor.

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

181 2. That this act shall not be construed to affect existing professional soil scientists appointments to

182 the Board for Professional Soil Scientists and Wetland Professionals for which the terms have not
183 expired. However, any new appointments made after the effective date of this act shall be made in
184 accordance with the provisions of this act.

185 3. That § 54.1-2204 of the Code of Virginia is repealed.

186 4. That the provisions of the first and third enactments of this act shall become effective on
187 January 1, 2012.