

Senate Bill 756

Sponsored by Senator MORSE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Board of Professional Wetland Scientists and professional wetland delineator certification program. Authorizes board to establish fees to recoup cost of certification program.

Provides criminal penalties for individual who misrepresents status as professional wetland delineator.

Provides that certification program becomes operative January 1, 2010.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wetland delineators; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. The Legislative Assembly finds and declares that it is in the best interest**
5 **of the people of the State of Oregon to establish a professional wetland delineator certifi-**
6 **ication program to:**

7 (1) **Guard the citizens of Oregon from unqualified wetland delineator practitioners;**

8 (2) **Foster the knowledgeable application of wetland science and wetland delineation pro-**
9 **cedures in implementing ORS 196.600 to 196.692 and 196.800 to 196.905 and in making land use**
10 **decisions; and**

11 (3) **Better protect, manage and conserve the waters of this state in accordance with the**
12 **findings and policies of ORS 196.668 and 196.805.**

13 **SECTION 2. As used in sections 1 to 13 of this 2009 Act:**

14 (1) **"Certified professional wetland delineator" means a person who is granted certifi-**
15 **ication by the Board of Professional Wetland Scientists under section 9 or 11 of this 2009 Act.**

16 (2) **"Practice of wetland delineation" means any of the following:**

17 (a) **The delineation of wetlands by accepted principles and methods, including investi-**
18 **gation of soil, vegetation and hydrologic parameters as specified in the United States Army**
19 **Corps of Engineers 1987 Wetlands Delineation Manual and regional supplements.**

20 (b) **Verifying delineated wetland boundaries established by others and delineating the ju-**
21 **risdictional limits of streams, estuaries and other waters of this state.**

22 (c) **Preparation of wetland delineation reports.**

23 (3) **"Wetland delineation" means:**

24 (a) **A specific determination of the limits of wetlands and other waters of this state in**
25 **accordance with applicable state and federal regulations; and**

26 (b) **The preparation of an accurate map of the delineated boundaries.**

27 (4) **"Wetland science" means the science dealing with the physical, chemical and biolog-**
28 **ical properties of wetland ecosystems.**

29 (5) **"Wetland scientist" means a person who has special knowledge of wetland science and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the methods and principles of wetland delineation acquired through education and experience
2 in the ecology, identification and mapping of wetlands.

3 (6) "Wetlands" has the meaning given that term in ORS 196.800.

4 **SECTION 3.** The professional wetland delineator certification program set forth in
5 sections 1 to 13 of this 2009 Act is a voluntary program. Sections 1 to 13 of this 2009 Act do
6 not prohibit:

7 (1) The practice of wetland delineation by persons who are not certified professional
8 wetland delineators.

9 (2) An employee or subordinate of a certified professional wetland delineator from en-
10 gaging in the practice of wetland delineation without certification.

11 (3) A professional engineer, certified landscape architect or similar professional from
12 providing services that constitute the practice of wetland delineation.

13 **SECTION 4.** (1) There is established a Board of Professional Wetland Scientists, con-
14 sisting of seven members appointed by the Governor.

15 (2) The Governor shall appoint board members as follows:

16 (a) Six members shall be certified professional wetland delineators, appointed from a list
17 of at least three names for each vacancy submitted by the Director of the Department of
18 State Lands; and

19 (b) One shall be a citizen member.

20 (3) Of the wetland delineator members:

21 (a) All must have experience with wetland delineation procedures; and

22 (b) At least two must have experience with state wetland regulations.

23 (4) The citizen member shall be a person who is not, and never has been, a member of
24 the wetland science profession and who is not, and never has been, affected by the practice
25 of wetland delineation or the application of ORS 196.800 to 196.905.

26 (5) The term of office of each board member is four years, but a member serves at the
27 pleasure of the Governor. Before the expiration of the term of a member, the Governor shall
28 appoint a successor whose term begins on July 1 next following. A member is eligible for
29 reappointment. If there is a vacancy for any cause, the Governor shall make an appointment
30 to become immediately effective for the unexpired term.

31 (6) A member of the board is entitled to compensation and expenses as provided in ORS
32 292.495.

33 **SECTION 5.** (1) The Board of Professional Wetland Scientists shall annually select one
34 of its members as chairperson and another as vice chairperson, for such terms and with
35 duties and powers necessary for the performance of the functions of such offices as the
36 board determines.

37 (2) Notwithstanding ORS 174.130, five members of the board constitutes a quorum for the
38 transaction of business.

39 (3) The board shall meet at least once every year at a place, day and hour determined
40 by the board. The board may also meet at other times and places specified by the call of the
41 chairperson or of a majority of the members of the board.

42 **SECTION 6.** (1) The Board of Professional Wetland Scientists may appoint an executive
43 director as necessary to carry out the operations of the board. If the board appoints an
44 executive director, the board shall fix the compensation of the executive director. The exec-
45 utive director serves at the pleasure of the board.

1 (2) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all
2 subordinate officers and employees of the board, prescribe their duties and fix their com-
3 pensation.

4 **SECTION 7.** (1) In accordance with applicable provisions of ORS chapter 183, the Board
5 of Professional Wetland Scientists may adopt rules:

6 (a) Governing applications for certification as a professional wetland delineator;

7 (b) Establishing standards for certifying professional wetland delineators;

8 (c) Relating to the professional methods and procedures used by certified professional
9 wetland delineators;

10 (d) Governing the examination of applicants for certification and the renewal, suspension
11 and revocation of certification;

12 (e) Establishing fees for:

13 (A) Application for certification;

14 (B) Examination;

15 (C) Certification by reciprocity;

16 (D) Renewal of certification;

17 (E) Reinstatement after late renewal;

18 (F) Professional listings; and

19 (G) Replacement of lost or damaged certificates; and

20 (f) Regarding any matter that the board reasonably considers necessary and proper for
21 the administration and enforcement of sections 1 to 13 of this 2009 Act.

22 (2) The board shall waive all fee requirements for employees of a governmental or tribal
23 body who are responsible for conducting or reviewing wetland delineations in the due course
24 of their employment.

25 (3) The board shall establish fees sufficient to produce estimated revenues to cover the
26 costs incurred by the board in administering and enforcing sections 1 to 13 of this 2009 Act.

27 **SECTION 8.** The Board of Professional Wetland Scientists and the authorized represen-
28 tatives of the board may administer oaths, take depositions and issue subpoenas to compel
29 the attendance of witnesses and the production of documents or other written information
30 necessary to carry out the provisions of sections 1 to 13 of this 2009 Act. If any person fails
31 to comply with a subpoena issued under this section or refuses to testify on matters on
32 which the person lawfully may be interrogated, the procedure set out in ORS 183.440 shall
33 be followed to compel obedience.

34 **SECTION 9.** (1) Any person engaging in the practice of wetland delineation or seeking to
35 engage in the practice of wetland delineation in this state may apply to the Board of Pro-
36 fessional Wetland Scientists to be a certified professional wetland delineator.

37 (2) The application shall be on a form prescribed by the board and shall contain the in-
38 formation required by the board. The applicant shall pay the fee prescribed by the board for
39 certification at the time the applicant files for certification.

40 (3) Unless an examination is unnecessary under section 11 of this 2009 Act, an applicant
41 shall take an examination administered by the board on the principles and practice of
42 wetland delineation. The board may include a field practicum component as part of the ex-
43 amination.

44 (4) The board shall certify an applicant under subsection (1) of this section as an Oregon
45 certified professional wetland delineator if the applicant:

1 (a) Is 18 years of age or older;

2 (b) Satisfies professional standards adopted by the board by rule;

3 (c) Satisfies educational requirements established under section 10 of this 2009 Act;

4 (d) Satisfies experiential or other requirements established under section 10 of this 2009
5 Act; and

6 (e) Achieves a score that is at least equal to the minimum score that the board has es-
7 tablished as a passing score on the examination administered by the board under subsection
8 (3) of this section.

9 (5) The board shall certify an applicant under subsection (1) of this section as an Oregon
10 certified professional wetland delineator without the applicant demonstrating compliance
11 with subsection (4)(c) of this section if the applicant demonstrates to the satisfaction of the
12 board that the applicant is certified as a professional wetland scientist or wetland profes-
13 sional in training by the Society of Wetland Scientists Professional Certification Program or
14 a successor program.

15 **SECTION 10.** (1) In order for an applicant to be certified as an Oregon certified profes-
16 sional wetland delineator, the applicant must have:

17 (a) A bachelor's or graduate degree from an accredited college or university in wetland
18 science, biology, botany, biological engineering, environmental engineering, ecology, soil sci-
19 ence, geology, physical geography, hydrology or any similar curriculum approved by the
20 Board of Professional Wetland Scientists in biology, physical sciences, natural science or
21 environmental engineering;

22 (b) Completed a course of instruction in state and federal wetland delineation methods
23 approved by the board; and

24 (c) A record of at least four years of:

25 (A) Experience in wetland delineation under the supervision of a certified professional
26 wetland delineator, the quality of which demonstrates to the board that the applicant is
27 competent to practice as a certified professional wetland delineator;

28 (B) Public sector experience in conducting wetland determinations and reviewing wetland
29 delineations, including field verification, under the supervision of a certified professional
30 wetland delineator, the quality of which demonstrates to the board that the applicant is
31 competent to practice as a certified professional wetland delineator; or

32 (C) A combination of experience described in subparagraph (A) or (B) of this paragraph.

33 (2) For purposes of this section, educational training shall not be considered as experi-
34 ence.

35 **SECTION 11.** (1) An individual who is certified as a wetland delineator in another state
36 and who is not the subject of any disciplinary proceeding before the regulatory body that
37 issued the other state certification, in lieu of being certified under section 9 of this 2009 Act,
38 may be certified under this section by filing an application with the Board of Professional
39 Wetland Scientists and submitting with the application a copy of the other state certificate
40 and the application fee established by the board.

41 (2) The board shall certify applicants described in subsection (1) of this section if the
42 board:

43 (a) Determines that the requirements of the state that issued certification to the appli-
44 cant are at least substantially equivalent to the requirements for certification under sections
45 9 and 10 of this 2009 Act; and

1 (b) Obtains agreement from the regulatory body of the other state that the State of
 2 Oregon's professional wetland delineator certification requirements are substantially equiv-
 3 alent and that the other state will permit an Oregon certified professional wetland delineator
 4 to be granted reciprocal certification.

5 **SECTION 12.** (1) A certified professional wetland delineator shall renew the wetland
 6 delineator's certification every two years by filing an application for certification renewal
 7 with the Board of Professional Wetland Scientists and obtaining renewal approval from the
 8 board.

9 (2) An application for renewal shall be:

10 (a) Made on a form prescribed by the board;

11 (b) Contain the information required by the board; and

12 (c) Be accompanied by payment of the renewal application fee.

13 (3) An application for certification renewal shall be automatically approved within 30 days
 14 of the date of application, unless the applicant receives written notification that:

15 (a) The certification renewal is denied; or

16 (b) The certification renewal is pending the results of further inquiry by the board.

17 (4) A denial of an application for certification renewal may be appealed as a contested
 18 case under ORS chapter 183.

19 (5)(a) If a certification has lapsed due to the failure to timely file an application for re-
 20 newal, the wetland delineator holding the lapsed certification may apply for certification re-
 21 newal by complying with subsection (2) of this section and also including payment of a
 22 reinstatement fee for late renewal.

23 (b) A lapsed certification may not be renewed under this section if the period of lapse
 24 was greater than 24 months.

25 **SECTION 13.** (1) An Oregon certified professional wetland delineator commits unprofes-
 26 sional conduct and is subject to disciplinary action by the Board of Professional Wetland
 27 Scientists if the individual:

28 (a) Obtained certification under section 9 of this 2009 Act through fraud or deceit;

29 (b) Violates or cooperates with others to violate any provision of sections 1 to 13 of this
 30 2009 Act or any rule adopted by the board;

31 (c) Performs any act likely to deceive, defraud or harm the public;

32 (d) Demonstrates gross negligence, incompetence or misconduct in the practice of
 33 wetland delineation; or

34 (e) Is convicted of a felony.

35 (2) The board shall by rule establish procedures for the objective investigation of
 36 allegations of unprofessional conduct and criteria for imposing disciplinary action, including
 37 but not limited to censure, certification suspension, certification revocation or refusal to
 38 renew a certification.

39 (3) A person may not represent, through verbal claim, sign, advertisement or letterhead,
 40 that the person is an Oregon certified professional wetland delineator, certified professional
 41 wetland delineator, certified wetland delineator, professional wetland delineator or use a
 42 substantially similar title unless the person has been certified by the board.

43 **SECTION 14.** Violation of section 13 (1)(a) or (3) of this 2009 Act is a Class B
 44 misdemeanor.

45 **SECTION 15.** (1) Notwithstanding the term of office specified by section 4 of this 2009

1 **Act, of the members first appointed to the Board of Professional Wetland Scientists:**

2 (a) **The citizen member shall serve for a term ending June 30, 2013.**

3 (b) **Two shall serve for terms ending June 30, 2011.**

4 (c) **Two shall serve for terms ending June 30, 2012.**

5 (d) **Two shall serve for terms ending June 30, 2013.**

6 (2) **Notwithstanding section 4 (2)(a) of this 2009 Act, board members appointed under**
7 **subsection (1)(b), (c) or (d) of this section need not be certified under sections 1 to 13 of this**
8 **2009 Act at the time of their appointment, but must become certified within six months of**
9 **the date on which the board begins certifying individuals as Oregon certified professional**
10 **wetland delineators.**

11 **SECTION 16. Notwithstanding section 10 (1) of this 2009 Act, experience requirements**
12 **described under section 10 (1)(c) of this 2009 Act need not take place under the supervision**
13 **of an Oregon certified professional wetland delineator or equivalent certified wetland**
14 **delineator from another state for periods occurring before January 1, 2016.**

15 **SECTION 17. Sections 9 to 14 of this 2009 Act become operative January 1, 2010.**

16 **SECTION 18. This 2009 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
18 **on its passage.**

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