

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. AMENDMENT.** Section 43-36-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-36-01. Definitions.**

6 Unless the context or subject matter otherwise requires:

7 1. ~~"Board" means the state board of registration for professional soil classifiers-~~
8 ~~hereinafter provided in this chapter.~~

NOTE:

It is recommended that the Board be referenced as appropriate within the bill draft.

With the exception of the State Board of Registration for Professional Engineers and Land Surveyors, the various state boards do not mention "registration" within their official names. (Only the North Dakota Marriage and Family Therapy Licensure Board references "licensure.")

9 2. "Kind of soil" is a group of natural bodies that has a discrete combination of landscape,
10 morphological, chemical, and physical properties.

NOTE: This definition is used only in subsections 3 and 7 of this section.

11 3. a. "Practice of soil classifying and practice of professional soil classifying"^{1,2} means
12 any service or work ~~the adequate performance of which~~that requires education.³

13 (1) Education in the physical, chemical, biological, and soil sciences; ~~training;~~

14 (2) Training and experience in the application of ~~the special knowledge of~~
15 ~~these~~physical, chemical, biological, and soil sciences to soil classification;
16 ~~the soil;~~

17 (3) The classification of soil by commonly accepted principles and methods;~~;~~

- 1 (4) The investigation of, evaluation of, and consultation ~~on~~ regarding the effect
2 of measured, observed, and inferred soil properties upon the various uses,
3 the;
- 4 (5) The preparation of soil:
5 (a) Soil descriptions, maps and;
6 (b) Maps, reports, and interpretive drawings, maps; and
7 (c) Maps and reports of soil properties and;
- 8 (6) Determinations regarding the effect of soil properties upon the various
9 uses; and
- 10 (7) Determinations regarding the effect of the various uses upon kinds of soil,
11 ~~any of which embraces such service or work either public or private~~
12 ~~incidental to the practice of soil classifying.~~

NOTE:

¹This subsection is trying to define two phrases. If they are in fact two separately definable phrases, then they should not be combined. If they mean the same thing, then it is not necessary to utilize two definitions or two references within the chapter.

²Whenever the word "professional" is used to define an activity, a question is raised with respect to distinctions. Is it the intent to separate this activity from "nonprofessional" efforts and if so, would those "nonprofessional" efforts even qualify as the defined activity?

³An attempt has been made to take a sentence that is 129 words in length, and break out the component parts so that each can be analyzed as to its appropriateness, e.g., paragraph 5 under current law references "maps and reports" and "maps and reports of soil properties." It is difficult to determine whether these references are redundant or necessary.

- 13 ~~b. (1) A person must be~~An individual is construed to practice or offer to practice
14 soil classifying ~~within the meaning and intent of this chapter who~~if by verbal
15 claim, sign, advertisement, letterhead, card, or use of some other title the
16 individual represents that the ~~person~~individual is a soil classifier, ~~but does~~
17 ~~not mean or include the practice of soil classifying by persons.~~
- 18 (2) Paragraph 1 is not applicable to an individual who is exempt under the
19 ~~provisions of section 43-36-24 nor the work ordinarily performed by persons~~
20 ~~who sample.~~
- 21 (3) Paragraph 1 is not applicable to an individual who samples and testtests soil
22 for fertility status or for construction materials and.

- 1 (4) Paragraph 1 is not applicable to an individual who conducts engineering
2 surveys and soundings to determine soil properties influencing the design
3 and construction of engineering and architectural projects.

NOTE: The preceding subdivision appears not to be a definition but an elaboration of prohibited activities. As such, it is misplaced. The subdivision should be reviewed for accuracy, as well as clarity.

Because this chapter requires registration before the performance of certain functions and because this chapter imposes a criminal sanction on anyone who performs those functions without being registered, it is important that the chapter accurately delineate those functions that are to fall within its requirements.

- 4 c. Notwithstanding the foregoing provisions, a person an individual may not be
5 construed to practice soil classifying unless the person individual offers soil
6 classifying services to or performs such soil classifying for the public.

NOTE: This appears to suggest that an individual can classify that individual's own soils without needing to be a registered soil classifier. Can the individual classify soils for a family member? A friend? A neighbor? Does the activity become "public" if it is compensated? Is the individual exempt if the individual performs such activity only for an employer?

- 7 4. ~~"Professional soil classifier" means a person~~ an individual ~~who by reason of that~~
8 ~~person's special knowledge of the physical, chemical, and biological sciences~~
9 ~~applicable to soils as natural bodies and of the methods and principles of soil~~
10 ~~classification as acquired by soils education and soil classification experience in the~~
11 ~~formation, morphology, description, and mapping of soils is qualified to practice soil~~
12 ~~classifying and who has been duly~~ is registered by the state board of registration for
13 professional soil classifiers.

NOTE: This subsection requires discussion regarding the use of the word "professional" and the extent of the verbiage that is necessary, given other definitions in this section.

- 14 5. ~~"Responsible charge" means direct control and personal supervision of soil~~
15 ~~classification.~~

NOTE: Because this phrase is not used in the chapter, there is no need to include it as a definition.

- 16 6. "Soil" is all of the groups of natural bodies occupying the unconsolidated portion of the
17 earth's surface capable of supporting plant life and having properties due to the
18 combined effect of climate and living organisms, as modified by topography and time,
19 upon parent materials.

NOTE: Is this a self-evident definition? If so, is it needed?

- 1 7. "Soil classification" is plotting the boundaries, describing and evaluating the kinds of
2 soil as to their behavior and response to management under the various uses.

NOTE: Rather than separately defining the "practice of soil classification" and "soil classification," perhaps the two could be combined.

- 3 ~~8. "Soil classifier" means a professional soil classifier as defined in subsection 4.~~

NOTE: If the designations "soil classifier" and "professional soil classifier" mean the same thing, it is not necessary to utilize both. See the note following subsection 3 with respect to the use of the word "professional."

- 4 9. "Soil classifier-in-training" means ~~a person~~ an individual who complies with the
5 requirements for education and character and who has passed an examination in the
6 fundamental soil and related subjects as provided for in sections 43-36-10, 43-36-11,
7 43-36-12, and 43-36-13.

8 **SECTION 2. AMENDMENT.** Section 43-36-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-36-02. Board - Appointments - Terms.**

- 11 ~~1. The state board of registration for professional soil classifiers is hereby created~~
12 ~~whose duty it is to administer the provisions of this chapter.~~¹ The board consists of
13 three professional soil classifiers appointed by the governor and two members at large
14 appointed by the governor.
- 15 ~~2. The members of the board must be appointed for term of each member is five years,~~
16 ~~and begins on July first. The terms must be staggered so the term of one member~~
17 ~~expires June thirtieth of each year and so that no more than one term expires each~~
18 ~~year and~~ the terms of the members at large do not expire in consecutive years. Each
19 member of the board shall receive a certificate of that member's appointment from the
20 governor and shall file with the secretary of state a written oath and affirmation of the
21 faithful discharge of the member's official duties. ~~On the expiration of the term of any~~
22 ~~member, the governor shall in the manner hereinbefore provided appoint for a term of~~
23 ~~five years a registered professional soil classifier or a member at large to take the~~
24 ~~place of the member whose term on said board is about to expire.~~
- 25 ~~3. If at any time during a member's term the member ceases to possess any of the~~
26 ~~qualifications required in this chapter, the member's office is deemed vacant and the~~
27 ~~governor shall appoint another individual for the remainder of the term.~~

1 4. A member may be reappointed.² ~~Each member shall hold office until a successor has-~~
2 ~~been duly appointed and has qualified.~~

NOTE:

¹The administration of this chapter is a duty. Whether or not it needs to be reiterated in a separate section will depend on the manner in which subsequent sections are treated.

²The committee may wish to review the merits of unlimited reappointments.

3 **SECTION 3. AMENDMENT.** Section 43-36-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-36-03. Board - Qualifications.**

6 Each member of the board must be a ~~citizen of the United States and a~~ resident of this
7 state.

NOTE: Section 44-03-04 states that "[n]o person may be appointed as deputy in any state office nor as a member or officer upon any official board of the state, or of any county or municipality of the state, who is not a citizen of the United States and who is not a bona fide resident of the state.

8 **SECTION 4. AMENDMENT.** Section 43-36-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-36-04. Board - Compensation and expenses.**

11 Each member of the board is entitled to receive compensation at the rate of sixty-two
12 dollars and fifty cents per day ~~and~~ plus reimbursement for expenses as provided by law for state
13 officers, if the member is attending ~~board~~ meetings or performing duties directed by the board.

NOTE: Legislators are compensated at the rate of \$157 per day. Other agricultural boards are compensated up to \$135 per day.

14 **SECTION 5. AMENDMENT.** Section 43-36-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-36-05. Board - Removal of members - Vacancies.**

17 The governor may remove any member of the board for misconduct, incompetency, neglect
18 of duty, or for any sufficient cause in the manner prescribed by law for the removal of state
19 officials. ~~Vacancies in the membership of the board must be filled for the unexpired term by~~
20 ~~appointment by the governor as provided in section 43-36-02.~~

NOTE: The provisions regarding the filling of vacancies were added to Section 43-36-02.

21 **SECTION 6. AMENDMENT.** Section 43-36-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **43-36-06. Board - Organization and meetings.**

2 1. The board shall hold at least two regular meetings each year.

3 2. Special meetings may be held as the bylaws of the board provide.

NOTE: Rather than referencing a document that is not readily available, consideration could be given to statutorily providing that the chairman shall call a special meeting within seven days when petitioned to do so by three members of the board.

4 3. The board shall elect or appoint annually the following officers: a chairman, a vice
5 chairman, and a secretary.

NOTE: It would be preferable to clarify that the board elects its chairman. Thereafter one can decide whether the other officers should be elected or appointed or whether it is necessary to reference them at all.

6 4. A quorum of the board consists of three members.

NOTE: The only time it is necessary to define a quorum would be in the case of a board having both voting and nonvoting members. Section 1-01-10 defines quorum as a majority of any board or commission.

7 **SECTION 7. AMENDMENT.** Section 43-36-07 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-36-07. Board - Powers.**

10 The board has the power to administer this chapter under chapter 28-32 and may:

11 1. ~~To adopt and amend all bylaws, rules of procedure, and regulations to administer and~~
12 ~~carry out the provisions of this chapter and for the conduct of its affairs and functions~~
13 ~~consistent with the constitution and laws of this state or this chapter which may be~~
14 ~~reasonably necessary for the proper performance of its duties and the regulation of its~~
15 ~~proceedings, meetings, records, examinations, and the conduct thereof, and to~~
16 ~~adopt~~Do all things necessary and proper to enforce and administer this chapter:

17 2. Adopt and promulgate a code of ethics which is binding upon all personsindividuals
18 registered under or subject to this chapter.

NOTE: As currently placed, adopting a code of ethics is optional, i.e., at the board's discretion. However, in Section 43-36-21, the board may take action against one's registration status for violating the code. A reconciliation of language is needed.

19 ~~2.3.~~ ~~To employ such clerks, technical experts, and attorneys as it may deem necessary or~~
20 ~~desirable to carry out the provisions of this chapter.~~Employ, bond, and compensate
21 necessary personnel;

22 3. ~~To apply in the name of the state for relief by injunction without bond, to enforce the~~
23 ~~provisions of this chapter, or to restrain any violation thereof. In such proceedings it is~~

1 not necessary to allege or prove either that an adequate remedy at law does not exist
2 or that substantial or irreparable damage would result from the continued violation
3 thereof. The members of the board are not personally liable under this proceeding.

NOTE: This would appear to be covered under the general directive proposed in subsection 1, i.e., to do all things necessary and proper to enforce and administer the chapter.

As for the final sentence regarding personal liability, it is suggested that it be deleted. Chapter 32-12.2 addresses claims against the state. The state may be held liable only for injuries proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment. The state is defined as including all boards and a state employee is defined as including every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation.

4 4. To negotiate and enter reciprocal agreements with similar agencies in other states¹;
5 provided that a reciprocal agreement may not limit the board's powers and duties
6 regarding any application for registration as a professional soil classifier or for
7 certification as a soil classifier-in-training² ~~or regarding the enforcement of this chapter~~
8 ~~or any rules adopted to implement this chapter.~~³

NOTE:

¹In similar statutes, boards have been given general authority to contract with any person for any lawful purpose. Is it the intent to limit this board just to reciprocal agreements with similar agencies in other states?

²If reciprocal agreements are going to be singled out, are the parameters articulated in the current law still applicable?

³An agency, which includes boards and commissions, cannot by contract change a statute or a rule. Therefore, this last phrase is unnecessary.

9 **SECTION 8. AMENDMENT.** Section 43-36-08 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-36-08. Receipts and disbursements.**

12 1. The secretary of the board shall receive and account for all moneys derived under the
13 provisions of this chapter and shall deposit and disburse the same in accordance with
14 section 54-44-12.

NOTE: Section 54-44-12 states:

All occupational and professional boards, associations, and commissions created by law shall deposit all fees and other moneys received in any bank selected by the majority vote of the governing body of the board, association, or commission. Checks may be drawn against the bank account, opened pursuant to this section, for the authorized expenditures of the board, association, or commission on the signature or signatures of the person or persons authorized to so act by the governing body. All money in accounts opened pursuant to this section are hereby appropriated for the

use of the occupational or professional board, association, or commission opening the account.

- 1 2. The secretary shall give a surety bond to the state in such sum as may be required by
2 the laws of this state.

NOTE: The state bonding fund, as set forth in Chapter 26.1-21, does not cover "an individual employed by an occupations and professional board or commission under title 43 or . . . the state bar association. " It is not clear which law is being referenced in terms of the amount of the bond that may be required.

- 3 3. The premium on ~~said~~the bond must be regarded as a proper and necessary expense
4 ~~of~~paid by the board.

- 5 4. The secretary shall receive such salary as the board shall determine.

NOTE: If the chapter provides general authority for the board to employ and compensate necessary personnel, this sentence is not needed.

- 6 5. Under no circumstances may the total amount of warrants issued in payment of the
7 expenses and compensation provided for in this chapter exceed the amount of
8 moneys collected.

NOTE: Because the term "warrants" is no longer commonly used, this sentence could provide that the board may not expend more than the board receives.

- 9 **SECTION 9. AMENDMENT.** Section 43-36-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-36-09. Records and reports.**

- 12 1. The board shall:
13 ~~1. Keep~~ keep a record of its proceedings ~~and of all applications.~~
14 2. The board shall keep a record of each applicant for registration ~~which record must~~
15 ~~show the~~ and include:
16 a. The applicant's name;
17 b. The applicant's age, and;
18 c. The applicant's last-known address of each applicant, the;
19 d. The applicant's place of business¹ of such applicant, the;
20 e. The applicant's education, experience, and other qualifications;
21 f. The type of examination required, whether or not;
22 g. Whether a certificate of registration was granted, whether or not the applicant
23 was rejected, the issued; and

- 1 h. ~~The date of the~~any action ~~o~~taken by the board, ~~and such other information as~~
2 may be deemed necessary by the board ~~which record of the board~~ regarding an
3 application.

NOTE: ¹Subdivision d references the applicant's place of business. It might be more appropriate to reference the applicant's place of employment.

- 4 2. a. The record required by this section is prima facie evidence of the proceeding of
5 the board ~~and a.~~

- 6 b. A transcript thereof of a board proceeding, if duly certified by the secretary under
7 seal, is admissible as evidence ~~withof~~ the same force ~~proceeding~~ and has the
8 same effect as if the original were produced.

NOTE: Is this referencing an original transcript or some other document? Because seals are no longer commonly used, the committee might wish to consider updating this language.

- 9 2-3. ~~Annually as of January first, the board shall~~ submit to the governor a report of its
10 transactions of the preceding year ~~and shall transmit to the governor a~~
11 ~~complete~~together with a statement of the receipts and expenditures of the board
12 attested by affidavits of its chairman and its secretary.

NOTE:

It might be more appropriate to submit this paperwork to the Office of Management and Budget or to the State Auditor.

The phrase "[a]nnually as of January first" is in need of clarification. Is this intended to mean that the fiscal year terminates on December 31 or that the report must be submitted on January 1?

- 13 **SECTION 10. AMENDMENT.** Section 43-36-10 of the North Dakota Century Code is
14 amended and reenacted as follows:

- 15 **43-36-10. General requirements for registration - Professional soil classifier -**
16 **Requirements for certification - Soil classifier in training.**

- 17 1. To be eligible for registration as a professional soil classifier ~~or certification as a soil~~
18 ~~classifier in training, an applicant must be of good character and reputation¹ and shall~~
19 ~~submit a written~~ an individual must:
20 a. Submit an application to the board ~~containing such information as~~ at the time and
21 in the manner required by the board ~~may require, together with; and~~
22 b. Provide the names of three references, one of ~~which~~ whom must be ~~from~~ a
23 professional soil classifier having personal knowledge of the applicant's soil

1 classifying experience; or in the case of an application for certification as a soil-
2 classifier-in-training, by three character references.

3 2. To be eligible for certification as a soil classifier-in-training², an individual must:

4 a. Submit an application to the board at the time and in the manner required by the
5 board; and

6 b. Provide the names of three references.

NOTE:

"Good character and reputation" is somewhat of a nebulous standard. An alternative might be to provide for the denial of an application if, for example, an individual has been convicted of a felony.

²The rewrite attempts to separate the application requirements for registration as a professional soil classifier and for certification as a soil classifier-in-training.

7 **SECTION 11. AMENDMENT.** Section 43-36-11 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-36-11. Registration without examination - Reciprocity.**

10 An applicant otherwise qualified must be ~~admitted to registration~~registered as a professional
11 soil classifier without examination ~~upon payment of,~~ provided:

12 1. The applicant pays the required fees if:

13 1. ~~The applicant is of good character, has been a resident of the state for at least one-~~
14 ~~year immediately preceding the date of application, was a practicing soil classifier on-~~
15 ~~July 1, 1973, meets the requirements of this chapter, and has performed work of a~~
16 ~~character satisfactory to the board; or; and~~

17 2. The applicant holds a certificate of registration in the practice of soil classifying issued
18 by another state, the District of Columbia, a Canadian province, or a foreign country, in
19 which the requirements are substantially similar to those of this state.

NOTE: This subsection needs clarification. Is it intended to reference any state or other jurisdiction having requirements similar to those of North Dakota or is it intended to accept a certificate from any other state, from the District of Columbia, from any Canadian province, or from any other foreign country having similar requirements to those of North Dakota?

Presumably each Canadian province credentials its own soil classifiers. In the case of other foreign countries, are the credentials issued only on the national level?

20 **SECTION 12. AMENDMENT.** Section 43-36-12 of the North Dakota Century Code is
21 amended and reenacted as follows:

1 **43-36-12. Registration with examination - Professional soil classifier.**

2 An applicant otherwise qualified must be admitted to registration as a professional soil
3 classifier if the applicant has successfully passed an examination in the principles and practice
4 of soil classifying, as prescribed by the board, and ~~has one of the following additional~~
5 qualifications:

6 1. a. Is a graduate of a soils curriculum approved by the board as satisfactory and
7 with:

NOTE: What is a soils curriculum? Where is it offered?

Does the board actually approve such a program, i.e., accredit the program, or is this intended to refer to a program of instruction that the board deems to be acceptable academic preparation for purposes of registering graduates?

8 b. Has a specific record of an additional four years or more of experience of a grade
9 and character which indicates to the board that the applicant is competent to
10 practice soil classifying; and ~~who holds~~

NOTE: What constitutes a "specific" record? What criteria are used to determine whether the experience is acceptable to the board? What constitutes "[competency] to practice soil classifying?"

11 c. Holds a valid soil classifier-in-training certificate;

NOTE: Colloquially, people often refer to "valid" certificates or "valid" licenses. However, if one's driver's license is invalid (e.g., perhaps expired), then one is not a licensed driver.

12 2. a. ~~Is a person who has~~Has satisfactorily completed a soils curriculum not approved
13 by the board; and

NOTE: Subsection 1(b) references a person who is a graduate of a soils curriculum. Subsection 2(a) references a person who has satisfactorily completed a soils curriculum. Is this an intentional distinction?

14 b. Has eight years or more of experience in soil classifying work of a character and
15 grade which indicates to the board that the applicant is competent to practice soil
16 classifying;

NOTE: See comments pertaining to subsection 1.

17 3. a. ~~Is a person who holds a valid~~Holds a soil classifier-in-training certificate with; and

18 b. Has a specific record of four years or more of experience as a soil
19 classifier-in-training of a grade and character which indicates to the board that
20 the applicant is competent to practice soil classifying; or

NOTE: Are there multiple grades of soil classifiers-in-training or is this trying to reference a "type of experience?"

- 1 4. ~~a.~~ Has experience of not less than four years of soil classification
2 research or as a teacher of soils^{1,2} in a college or university offering an approved
3 soils curriculum of four years or more; ~~i~~ and
4 b. Has a minimum of two years of soil classifying experience of a character and
5 grade which indicates to the board that the applicant is competent to practice soil
6 classifying.

NOTE:

^{1,2}Normally, one teaches students--not soils. It is recommended that this concept be reworded.

Does the four-year requirement apply to the teaching experience as well or is it referencing a soils curriculum of that length?

7 **SECTION 13. AMENDMENT.** Section 43-36-13 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-36-13. Qualifications of soil classifier-in-training.**

- 10 1. Unless otherwise qualified, ~~a person~~ an individual must be ~~admitted to~~
11 ~~certification~~ certified as a soil classifier-in-training, ~~which certification is valid for four-~~
12 ~~years;~~ if the person is:
- 13 4. a. A graduate of a soils curriculum approved by the board and has passed an
14 examination in the fundamentals¹ of soil classification; or
- 15 2. b. An applicant who has completed a soils curriculum not approved by the board
16 and who has a specific record of four years of soil classification experience² of a
17 grade and character satisfactory to the board and who passes an examination in
18 the fundamentals of soil classification.
- 19 2. A certification issued under this section is valid for a period of four years from the date
20 of issuance.

NOTE:

¹In Section 43-36-12, the examination required of potential soil classifiers deals with the principles and practice of soil classifying. In Section 43-36-13, the examination required of potential soil classifiers-in-training deals with the fundamentals of soil classification. Are the distinctions sufficient?

²One of the requirements in subsection 1(b) is that the applicant have four years of soil classification experience. If the applicant is not registered or certified, how is this experience obtained?

21 **SECTION 14. AMENDMENT.** Section 43-36-14 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **43-36-14. Application for registration.**

2 Application for registration as a professional soil classifier and for certification as a soil
3 classifier-in-training must be on a form prescribed and furnished by the board, must contain
4 statements made under oath showing the applicant's education, a detailed summary of the
5 applicant's experience, and references as required by this chapter and must be accompanied
6 by an application fee established by the board of not less than fifty nor more than two hundred
7 dollars.¹ If the national test² is administered, the amount may not exceed five hundred dollars.

NOTE:

¹Is the application fee the same for both registration as a professional soil classifier and certification as a soil classifier-in-training?

²This singular reference to a national test needs some elaboration.

8 **SECTION 15. AMENDMENT.** Section 43-36-15 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-36-15. Registration fees.**

- 11 1. The board shall establish registration fees, provided:
- 12 a. The registration fee for in-state professional soil classifiers must be at least fifty
13 dollars but not more than three hundred dollars.
- 14 b. The registration fee for in-state soil classifier-in-training certification or enrollment¹
15 must be at least twenty-five dollars but not more than one hundred dollars.

NOTE:

¹What is meant by enrollment?

- 16 c. The registration fee for out-of-state professional soil classifiers must be at least
17 one hundred dollars but not more than three hundred dollars.
- 18 2. If the board denies the issuance of a certificate to an applicant, the board shall retain
19 the application fee.

20 **SECTION 16. AMENDMENT.** Section 43-36-16 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-36-16. Examinations.**

- 23 1. Examinations must be held at such times and places as the board determines.

NOTE: Is the board not the entity that conducts the examination?

- 24 2. Examinations required on fundamental soil subjects may be taken at any time
25 prescribed by the board.

NOTE: The need to distinguish the concepts in subsections 1 and 2 is not readily discernible.

- 1 3. The final examinations may not be taken until the applicant has completed a period of
2 soil classifying experience as provided in this chapter.

NOTE: This singular reference to a final examination needs some elaboration.

- 3 4. The passing grade on any examination may not be less than seventy percent.

- 4 5. A candidate failing one examination may apply for reexamination, which may be
5 granted upon payment of a fee established by the board of not less than twenty-five
6 nor more than fifty dollars.

- 7 6. Any candidate for registration having an average grade of less than fifty percent may
8 not apply for reexamination for a period of one year from the date of such examination.

9 **SECTION 17. AMENDMENT.** Section 43-36-17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-36-17. Certificates.**

- 12 1. The board shall issue a certificate of registration upon payment of the registration fee
13 as provided for in this chapter to any applicant who in the opinion of the board has met
14 the requirements of this chapter.

- 15 2. Enrollment cards must be issued to those who qualify as soil classifiers-in-training.

- 16 3. Certificates of registration must carry the designation "professional soil classifier",
17 must show the full name of the registrant without any titles, must be numbered, and
18 must be signed by the chairman and the secretary under the seal of the board.

NOTE: A law license is signed only by the secretary-treasurer of the board. Is it necessary to have two individuals sign the soil classifier's certificate?

- 19 4. The issuance of a certificate of registration by the board is prima facie evidence that
20 the ~~person~~individual named therein is entitled to all the rights and privileges of a
21 professional soil classifier during the term for which the certificate is valid providing the
22 certificate has not been revoked or suspended.

NOTE: If a certificate has been revoked or suspended, the practical effect is that it does not exist and therefore cannot extend or convey any of the rights and privileges.

23 **SECTION 18. AMENDMENT.** Section 43-36-18 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **43-36-18. Expirations and renewals.**

2 1. ~~Certificates of registration expire on the last day of the month of December following~~
3 ~~their issuance and become invalid after that date unless renewed~~December thirty-first.

4 2. ~~It is the duty of the secretary of the board to~~The secretary shall notify every
5 ~~person~~individual registered under this chapter of the ~~date of the expiration of said~~
6 ~~certificate of registration~~date and the amount of the fee required for its renewal.

7 ~~Such~~The notice must be mailed to the registrant at the registrant's last-known address
8 at least one month in advance of the expiration of ~~said certificate~~date.

NOTE: The committee might want to consider an electronic notification, unless the registrant requests a paper notification.

9 3. Renewal may be effected at any time prior to or during the month of December by the
10 payment of a fee established by the board not to exceed the fees established for
11 registration.

12 4. Renewal of an expired certificate may be effected under rules ~~promulgated~~adopted by
13 the board regarding requirements for reexamination and penalty fees.

14 **SECTION 19. AMENDMENT.** Section 43-36-19 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-36-19. Reissuance of certificates.**

17 A new certificate of registration to replace any certificate lost, destroyed, or mutilated may
18 be issued subject to the rules of the board. A reasonable charge must be made for such
19 issuance.

NOTE: It would be appropriate to authorize the board to replace a certificate that has been lost, destroyed, or mutilated. It is not clear why the phrase "subject to the rules of the board" is included.

20 **SECTION 20. AMENDMENT.** Section 43-36-20 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-36-20. Code of ethics.**

23 1. The board shall ~~cause to have prepared and shall~~prepare and adopt a code of ethics a
24 ~~copy of which must be delivered.~~

25 2. The board shall provide a copy to every registrant and applicant for registration under
26 this chapter. Such delivery constitutes due notice to all registrants.

1 ~~3. The board may revise and amend this~~the code of ethics ~~from time to time and shall~~
2 ~~forthwith notify. The board shall provide written notice of all changes to~~ each registrant
3 ~~in writing of such revisions and amendments. Such,~~

4 ~~4. The~~ code of ethics ~~when adopted~~ applies to all certificate holders.

NOTE: Sometimes there is a reference to certificate holders. Other times there are references to registrants. The terminologies will need to be made consistent.

5 **SECTION 21. AMENDMENT.** Section 43-36-21 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-36-21. Disciplinary action - Revocations, suspensions, or reprimands.**

8 ~~The board has the power to~~ may reprimand a registrant or suspend, refuse to renew, or
9 revoke the certificate of registration of, ~~or reprimand any registrant who~~ if the registrant is guilty
10 of any of the following:

11 1. ~~The practice of fraud~~Fraud or deceit in obtaining a certificate of registration.;

NOTE: The committee might wish to clarify whether the reference to guilt implies a criminal conviction or a determination by the board. An alternative might be to provide that a sanction could be imposed if the individual submitted false or misleading information in connection with the application for registration.

12 2. ~~Any gross~~Gross negligence, incompetence, or misconduct in the practice of soil
13 classifying; or

NOTE: The committee might wish to clarify whether the acts referenced in this subsection are based on a legal finding or are merely the board's determination.

14 3. Any offense determined by the board to have a direct bearing upon a registrant's
15 ability to serve the public as a professional soil classifier, ~~or the board determines,~~
16 ~~following conviction of any offense, that a registrant is not sufficiently rehabilitated~~
17 ~~under section 12.1-33-02.1.; or~~

NOTE: Because the board is given the authority to impose a range of sanctions, and because the board may not be in a position to determine whether an individual is "sufficiently rehabilitated," it is suggested that this latter provision be removed.

18 4. ~~Violation of~~Violating the code of ethics ~~adopted and promulgated by the board.~~

19 **SECTION 22. AMENDMENT.** Section 43-36-22 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **43-36-22. Disciplinary action - Procedure.**

22 1. Any person may prefer charges of fraud, deceit, gross negligence, incompetence,
23 misconduct, or violation of the code of ethics against any individual registrant.

1 ~~Such~~The charges must be in writing ~~and must be~~, sworn to by the person ~~or persons~~-
2 making them, and ~~must be~~ filed with the secretary of the board.

3 2. All charges, unless dismissed by the board as unfounded or trivial, must be heard by
4 the board within three months after the date on which they have been preferred. The
5 time and place for ~~said~~the hearing must be fixed by the board and a copy of the
6 charges, together with a notice of the time and place of hearing, must be served upon
7 the accused either personally or sent by registered ~~or certified~~ mail to the last-known
8 address of ~~such individual registrant~~the accused, at least thirty days before the date
9 fixed for hearing.

NOTE: Section 1-09-36 provides that "[w]henver the term "registered mail" appears in the laws of the state of North Dakota it means "registered or certified mail."

10 3. At any hearing the accused registrant has the right to appear in person or by counsel,
11 or both, to cross-examine witnesses appearing against the accused, and to produce
12 evidence and witnesses in defense of the accused. If the accused ~~person~~ fails or
13 refuses to appear, the board may proceed to hear and determine the validity of the
14 charges.

15 4. If after ~~such~~the hearing a majority of the board votes in favor of sustaining the
16 charges, the board shall make findings of fact, draw its conclusions ~~and~~, issue its
17 order ~~therein~~, and serve the ~~same~~order upon the accused. ~~In said order the~~

18 5. The board may reprimand, suspend, refuse to renew, or revoke the ~~accused~~-
19 ~~individual's~~accused's certificate of registration.

20 6. Any ~~person~~individual who feels aggrieved by any action of the board in denying,
21 suspending, refusing to renew, or revoking that ~~person's~~individual's certificate of
22 registration may appeal therefrom to the district court under the procedures provided
23 by chapter 28-32.

24 **SECTION 23. AMENDMENT.** Section 43-36-23 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **43-36-23. Right to practice.**

27 ~~No person~~An individual may not practice or offer to practice professional soil classifying as
28 ~~defined by this chapter~~ unless the ~~person~~individual is duly registered to practice under this
29 chapter or exempt from ~~the provisions of this chapter~~.

1 **SECTION 24. AMENDMENT.** Section 43-36-24 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-36-24. Exemptions.**

4 This chapter ~~shall~~does not be construed to prevent or affect:

- 5 1. The practice or offer to practice soil classifying by ~~a person~~an individual not a resident
6 or having no established place of business in this state provided such ~~person~~individual
7 is legally qualified by the provisions of this chapter to practice soil classifying as
8 defined herein in that ~~person's~~individual's own state which extends similar privileges to
9 ~~persons~~individuals registered under this chapter provided such ~~person~~individual shall
10 make application accompanied by the appropriate application fee to the board in
11 writing prior to that ~~person's~~individual's practicing or offering to practice soil classifying,
12 may be granted a temporary permit for a definite period of time not to exceed one year
13 to do a specific job provided, however, no right to practice soil classifying shall accrue
14 to such applicant with respect to any other work not set forth in said permit.

NOTE: This subsection appears to authorize the issuance of a temporary registration to a nonresident performing a specific soil classification activity. That being the case, it would be preferable to clarify, in a separate section, that the board is authorized to provide such a certificate.

- 15 2. The work of an employee or a subordinate of a person holding a certificate of
16 registration under this chapter or an employee of ~~a person~~an individual practicing
17 lawfully under subsection 1, provided such work does not include final soil classifying
18 decisions and is done under the direct supervision of and verified by ~~a person~~an
19 individual holding a certificate of registration under this chapter or ~~a person~~an
20 individual practicing lawfully under subsection 1.
21 3. ~~The practice of any other legally recognized profession or trade.~~

NOTE: If written clearly, there should be no confusion regarding those professions or trades to which this chapter applies.

- 22 4. a. The practice of soil classifying by any ~~person~~individual regularly employed to
23 perform soil classifying services solely for that ~~person's~~individual's employer ~~or~~
24 ~~for a subsidiary or affiliated corporation or limited liability company of that~~
25 ~~person's employer~~, providing the soil classifying performed is in connection with
26 the property, products, or services of that ~~person's~~individual's employer.

1 b. For purposes of this subsection, an employer includes its subsidiaries, affiliated
2 corporations ,or limited liability companies.

3 **SECTION 25. AMENDMENT.** Section 43-36-25 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-36-25. Violation - Penalty.**

6 ~~Any person who practices or offers to practice professional soil classifying in this state~~
7 ~~without being registered in accordance with the provisions of this chapter, or any person using~~
8 ~~or employing the words "soil classifier" or "professional soil classifier" or any modification or~~
9 ~~derivative thereof in its name or form of business or activity except as authorized in this chapter,~~
10 ~~or any person presenting the certificate of registration of another, or any person who falsely~~
11 ~~impersonates any other registrant of like or different name, or any person who attempts to use~~
12 ~~an expired or revoked or nonexistent certificate of registration, or who practices or offers to~~
13 ~~practice when not qualified, or any person who falsely claims that that person is registered~~
14 ~~under this chapter, or any person who violates any of the other provisions of~~violating this
15 chapter is guilty of a class B misdemeanor.

NOTE: If written clearly, there should be no confusion regarding those activities that are prohibited by this chapter.