

Introduced by

1 A BILL for an Act

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

3 In order to highlight proposed changes for discussion purposes, this bill draft does not follow
4 standard Legislative Council drafting procedures. Those will be accommodated in future
5 revisions.

6 **SECTION 1. AMENDMENT.** Subsection 28 of section 38-14.1-02 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 28. "Soil classifier" means ~~a professional soil classifier as defined in subsection 4 of~~
9 ~~section 43-36-01~~ an individual registered with the board of soil classifiers in
10 accordance with chapter 43-36.

11 **SECTION 2. AMENDMENT.** Subdivision t of subsection 1 of section 38-14.1-14 of the North
12 Dakota Century Code is amended and reenacted as follows:

13 t. A soil survey of all the suitable plant growth material within the permit area. Such
14 survey must also locate and identify prime soils in the permit area. The survey
15 must be made by ~~a professional soil classifier as described in subsection 4 of~~
16 ~~section 43-36-01~~ an individual registered with the board of soil classifiers in
17 accordance with chapter 43-36.

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

20 **43-36-01. Definitions.**

21 ~~Unless the context or subject matter otherwise requires:~~

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

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

3 ~~3. "Practice of soil classifying and practice of professional soil classifying" means any~~
4 ~~service or work the adequate performance of which requires education in the physical,~~
5 ~~chemical, biological, and soil sciences, training and experience in the application of~~
6 ~~the special knowledge of these sciences to soil classification, the soil classification by~~
7 ~~accepted principles and methods, investigation, evaluation, and consultation on the~~
8 ~~effect of measured, observed, and inferred soil properties upon the various uses, the~~
9 ~~preparation of soil descriptions, maps and reports and interpretive drawings, maps and~~
10 ~~reports of soil properties and the effect of soil properties upon the various uses, and~~
11 ~~the effect of the various uses upon kinds of soil, any of which embraces such service~~
12 ~~or work either public or private incidental to the practice of soil classifying.~~

13 ~~A person must be construed to practice or offer to practice soil classifying within~~
14 ~~the meaning and intent of this chapter who by verbal claim, sign, advertisement,~~
15 ~~letterhead, card, or use of some other title represents that the person is a soil~~
16 ~~classifier, but does not mean or include the practice of soil classifying by persons~~
17 ~~exempt under the provisions of section 43-36-24 nor the work ordinarily performed by~~
18 ~~persons who sample and test soil for fertility status or construction materials and~~
19 ~~engineering surveys and soundings to determine soil properties influencing the design~~
20 ~~and construction of engineering and architectural projects. Notwithstanding the~~
21 ~~foregoing provisions, a person may not be construed to practice soil classifying unless~~
22 ~~the person offers soil classifying services to or performs such soil classifying for the~~
23 ~~public.~~

24 4. ~~"Professional soil classifier" means a person who by reason of that person's special~~
25 ~~knowledge of the physical, chemical, and biological sciences applicable to soils as~~
26 ~~natural bodies and of the methods and principles of soil classification as acquired by~~
27 ~~soils education and soil classification experience in the formation, morphology,~~
28 ~~description, and mapping of soils is qualified to practice soil classifying and who has~~
29 ~~been duly registered by the state board of registration for professional soil classifiers.~~

30 5. ~~"Responsible charge" means direct control and personal supervision of soil~~
31 ~~classification.~~

- 1 6. ~~"Soil" is all of the groups of natural bodies occupying the unconsolidated portion of the~~
2 ~~earth's surface capable of supporting plant life and having properties due to the~~
3 ~~combined effect of climate and living organisms, as modified by topography and time,~~
4 ~~upon parent materials.~~
- 5 7. ~~"Soil classification" is plotting the boundaries, describing and evaluating the kinds of~~
6 ~~soil as to their behavior and response to management under the various uses.~~
- 7 8. ~~"Soil classifier" means a professional soil classifier as defined in subsection 4.~~
- 8 9. ~~"Soil classifier-in-training" means a person who complies with the requirements for~~
9 ~~education and character and who has passed an examination in the fundamental soil~~
10 ~~and related subjects as provided for in sections 43-36-10, 43-36-11, 43-36-12, and~~
11 ~~43-36-13.~~
- 12 1. In this chapter, unless the context otherwise requires, "soil classification" means the
13 determination of a soil's suitability for a particular purpose through:
- 14 a. The examination of landscape and landform characteristics;
15 b. The sampling or analysis, or both, of soil properties and characteristics; and
16 c. The identification and description of soil profile characteristics, including soil
17 horizons.
- 18 2. The term does not include:
- 19 a. The sampling and testing of soil for fertility status;
20 b. The sampling and testing of soil for the presence of construction materials;
21 c. The practice of engineering, as defined in chapter 43-19.1;
22 d. The practice of architecture, as defined in chapter 43-03; or
23 e. The practice of landscape architecture, as defined in chapter 43-03.

NOTE: The rewrite of this section is an attempt to create a definition of soil classification that is readily comprehensible and which clearly excludes other professional activities.

Because current law makes it a Class B misdemeanor for an individual to practice soil classification without being registered under this chapter, it is necessary to ensure that individuals have due notice of the activities that constitute soil classification.

The penalty for a Class B misdemeanor is 30 days' imprisonment, a fine of \$1,500, or both.

24 **SECTION 4. AMENDMENT.** Section 43-36-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

1 **43-36-02. Board - Appointments - Terms.**

2 ~~A state board of registration for professional soil classifiers is hereby created whose duty it~~
3 ~~is to administer the provisions of this chapter. The board consists of three professional soil~~
4 ~~classifiers appointed by the governor and two members at large appointed by the governor. The~~
5 ~~members of the board must be appointed for five years, staggered so the term of one member~~
6 ~~expires June thirtieth of each year and so that the terms of the members at large do not expire~~
7 ~~in consecutive years. Each member of the board shall receive a certificate of that member's~~
8 ~~appointment from the governor and shall file with the secretary of state a written oath and~~
9 ~~affirmation of the faithful discharge of the member's official duties. On the expiration of the term~~
10 ~~of any member, the governor shall in the manner hereinbefore provided appoint for a term of~~
11 ~~five years a registered professional soil classifier or a member at large to take the place of the~~
12 ~~member whose term on said board is about to expire. A member may be reappointed. Each~~
13 ~~member shall hold office until a successor has been duly appointed and has qualified.~~

- 14 1. The board of soil classifiers¹ consists of five individuals, three of whom must be soil
15 classifiers registered under this chapter.
- 16 2. The governor shall appoint each member of the board.²
- 17 3. The term of office for each member is five years and begins on July first.
- 18 4. The terms must be staggered so that no more than one term expires each year.³
- 19 5. A member may not serve more than three consecutive terms.⁴ If an individual is
20 appointed to fill a vacancy, that service is not counted as a term, for purposes of this
21 section, unless the duration of that service exceeds two years.⁵
- 22 6. If at any time during a member's term the member ceases to possess any of the
23 qualifications required by this chapter, the member's office is deemed vacant and the
24 governor shall appoint another individual for the remainder of the term.⁶

NOTE:

¹The name of the board is currently the "State Board of Registration for Professional Soil Classifiers." There is only one other board that references "registration" within its official name--the "State Board of Registration for Professional Engineers and Land Surveyors." There is only one board that references "licensure" within its official name--the "North Dakota Marriage and Family Therapy Licensure Board." It is suggested that consideration be given to simplifying the board's name to the "Board of Soil Classifiers."

²Current law provides that the Governor is to appoint members of the board. One also has the option of requiring that the Governor appoint from a list of nominees submitted by the board. From a policy perspective, this would strengthen the board's control while reducing the Governor's options.

³Current law provides that the terms of the two "at-large" members may not expire in consecutive years. This has been omitted because the board has the statutory authority to stagger its terms.

⁴Current law imposes no limit on the number of terms that a board member may serve. Representatives of the board suggested that a limitation of three terms (15 years) should be considered.

⁵When a term limit is instituted, it is appropriate to clarify how that limit is determined in the case of an individual who is first appointed to fill a vacancy. The reference to "two years" is inserted for discussion purposes.

⁶Vacancies in office are defined in Section 44-02-01 and include death, disability, resignation, removal, failure to discharge duties, failure to qualify, ceasing to be a resident, conviction of a felony, etc.

1 **SECTION 5. AMENDMENT.** Section 43-36-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~**43-36-03. Board – Qualifications.**~~

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

NOTE: It is recommended that this section be deleted because it is duplicative of Section 44-03-04, which 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."

6 **SECTION 6. AMENDMENT.** Section 43-36-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-36-04. Board - Compensation and expenses.**

9 Each member of the board of soil classifiers is entitled to receive compensation ~~at the rate-~~
10 ~~of sixty-two dollars and fifty cents~~ in the amount established by the board, but not exceeding one
11 hundred thirty-five dollars per day ~~and~~ plus reimbursement for expenses as provided by law for
12 state officers, if the member is attending board meetings or performing duties directed by the
13 board.

NOTE: Representatives of the Board of Soil Classifiers suggested that the authority to increase board member compensation should be included.

14 **SECTION 7. 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~~ Upon a showing of good cause, the governor may remove any member of the board of
18 soil classifiers for misconduct, incompetency, or neglect of duty, ~~or for any sufficient cause in the~~
19 ~~manner prescribed by law for the removal of state officials. Vacancies in the membership of the~~

1 board must be filled for the unexpired term by appointment by the governor as provided in
2 section 43-36-02.

NOTE: State officials are removable by impeachment.

3 **SECTION 8. AMENDMENT.** Section 43-36-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-36-06. Board - ~~Organization and meetings~~Election of chairman - Meetings.**

6 1. Annually, the board of soil classifiers shall elect one member to serve as the
7 chairman.¹

8 2. The chairman shall call all meetings of the board and shall call a special meeting
9 within seven days when petitioned to do so by two members of the board.²

10 3. ~~The board shall hold at least two regular meetings each year. Special meetings may~~
11 ~~be held as the bylaws of the board provide. The board shall elect or appoint annually~~
12 ~~the following officers: a chairman, a vice chairman, and a secretary. A quorum³ of the~~
13 ~~board consists of three members~~meet at least once every six months.

NOTE:

¹Current law directs the Board of Soil Classifiers to elect or appoint a chairman, a vice chairman, and a secretary. Statutorily, the role of the chairman is important. The board can appoint such other positions as it deems necessary.

²Current law provides that special meetings may be held as the bylaws provide. Because bylaws are often not readily accessible, it is suggested that the parameters for calling a special meeting of the board be included in the law.

³Current law provides that a quorum consists of three members. This is being deleted because Section 1-01-10 already defines a quorum as a majority of any board or commission. The only time additional clarifying verbiage would be required is if a board consists of both voting and nonvoting members.

14 **SECTION 9. AMENDMENT.** Section 43-36-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-36-07. Board - Powers.**

17 ~~The board has the power to administer this chapter under chapter 28-32 and:~~

18 1. ~~To adopt and amend all bylaws, rules of procedure, and regulations to administer and~~
19 ~~carry out the provisions of this chapter and for the conduct of its affairs and functions~~
20 ~~consistent with the constitution and laws of this state or this chapter which may be~~
21 ~~reasonably necessary for the proper performance of its duties and the regulation of its~~
22 ~~proceedings, meetings, records, examinations, and the conduct thereof, and to adopt~~

1 and promulgate a code of ethics which is binding upon all persons registered under or
2 subject to this chapter.

3 2. To employ such clerks, technical experts, and attorneys as it may deem necessary or
4 desirable to carry out the provisions of this chapter.

5 3. To apply in the name of the state for relief by injunction without bond, to enforce the
6 provisions of this chapter, or to restrain any violation thereof. In such proceedings it is
7 not necessary to allege or prove either that an adequate remedy at law does not exist
8 or that substantial or irreparable damage would result from the continued violation
9 thereof. The members of the board are not personally liable under this proceeding.

10 4. To negotiate and enter reciprocal agreements with similar agencies in other states;
11 provided that a reciprocal agreement may not limit the board's powers and duties
12 regarding any application for registration as a professional soil classifier or for
13 certification as a soil classifier in training or regarding the enforcement of this chapter
14 or any rules adopted to implement this chapter.

15 The board of soil classifiers may:

16 1. Expend moneys collected pursuant to this chapter for its administration;

17 2. Employ, bond, and compensate necessary personnel;

18 3. Accept gifts, grants, and donations of money, property, and services to carry out this
19 chapter;

20 4. Contract with any person for any lawful purpose;

21 5. Sue and be sued; and

22 6. Do all things necessary and proper to enforce and administer this chapter.

NOTE:

1. Current subsection 1 states that the board has the power to adopt regulations, i.e., rules. Chapter 28-32, the Administrative Agencies Practice Act, already provides this authority to agencies, boards, bureaus, commissions, departments, etc. It is not necessary to repeat the authority in this chapter.
2. Current subsection 3 authorizes the board to take various legal actions as well as to enforce the chapter. In order to eliminate excess verbiage, proposed subsection 6 authorizes the board to do all things necessary and proper to enforce the chapter.
3. Current subsection 3 provides that the members of the board are not personally liable under this proceeding. Chapter 32-12.1 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. Current subsection 4 authorizes the board to negotiate and enter reciprocal agreements with similar agencies in other states provided that the agreement does not limit certain of the board's powers and duties and that it does not limit enforcement of the chapter or any rules adopted to implement the chapter. It is suggested that the language be amended to provide that the board may contract with any person for any lawful purpose. A "person" is defined in Section 1-01-49 as "an individual, organization (which includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity), government, political subdivision, or government agency or instrumentality."

Because a contract entered into by a board cannot alter either a statute or a rule, the proposed language eliminates the unnecessary verbiage.

1 **SECTION 10.** A new section to chapter 43-36 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Board - Duties.**

- 4 1. The board of soil classifiers shall adopt a code of ethics that is applicable to all
5 individuals registered under this chapter.

NOTE: Current Section 43-36-07(1) authorizes but does not require the board to adopt a code of ethics. Current Section 43-36-21, however, authorizes the board to take action against an individual's registration status for violating the code. The proposed language therefore references the adoption of a code of ethics as a duty, rather than a power.

- 6 2. The board shall develop and make available on its website a list of each course, by
7 name and number, that is:
8 a. Currently offered by an accredited institution of higher education in this state and
9 in the bordering states; and
10 b. Determined by the board to provide academic preparation appropriate to the
11 classification of soils.

NOTE: Section 13, which sets forth the academic requirements for becoming a soil classifier, provides that at least 15 credits must come from the list of qualifying soil-related courses, or be otherwise approved by the Board of Soil Classifiers. The intent is that the board would annually survey institutions of higher education in this state and in the surrounding states to determine which courses provide academic experiences appropriate to the pursuit of soil classification and then publish that determination so individuals who might be considering the field have actual notice of courses acceptable to the board.

12 **SECTION 11. AMENDMENT.** Section 43-36-08 of the North Dakota Century Code is
13 amended and reenacted as follows:

1 **43-36-08. Receipts and disbursements.**

2 ~~The secretary of the board of soil classifiers shall receive and account for all moneys-~~
3 ~~derived under the provisions of this chapter and shall deposit and disburse the same~~all moneys
4 ~~received under this chapter~~ in accordance with section 54-44-12. ~~The secretary shall give a-~~
5 ~~surety bond to the state in such sum as may be required by the laws of this state. The premium-~~
6 ~~on said bond must be regarded as a proper and necessary expense of the board. The secretary~~
7 ~~shall receive such salary as the board shall determine. Under no circumstances may the total~~
8 ~~amount of warrants issued in payment of the expenses and compensation provided for in this~~
9 ~~chapter exceed the amount of moneys collected.~~

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 moneys 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.

The current section references surety bonds, "in such sum as may be required by the laws of this state." The state bonding fund, as set forth in Chapter 26.1-21, does not cover "an individual employed by an occupational 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. Furthermore, representatives of the board asked that the language regarding the bonding requirement be deleted.

The current section also references the secretary's salary. This has been removed because the proposed language in Section 43-36-07 authorizes the board to employ and compensate personnel.

10 **SECTION 12. AMENDMENT.** Section 43-36-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-36-09. Records and reports.**

- 13 1. The board of soil classifiers shall:
- 14 1. ~~Keep~~keep a record of its proceedings and,
- 15 2. The board shall keep a record of all applications for registration ~~which record must~~
16 ~~show the name, age, and last-known address of each applicant, the place of business-~~
17 ~~of such applicant, the,~~
- 18 3. The board shall keep a record of:

- 1 a. ~~Each applicant's education; and experience and other qualifications, type of~~
2 ~~examination required, whether or not a certificate of registration was granted,~~
3 ~~whether or not the applicant was rejected, the date of the action of the board, and~~
4 ~~such other information as may be deemed necessary by the board which record~~
5 ~~of the board for purposes of taking action on an application;~~
6 b. The date and results of the applicant's fundamentals of soil science examination
7 and practical examination; and
8 c. Whether the applicant was registered as a soil classifier in accordance with this
9 chapter.
10 4. Any record required by this section is prima facie evidence of the proceeding of the
11 ~~board and a transcript thereof duly certified by the secretary under seal is admissible~~
12 ~~as evidence with the same force and effect as if the original were produced matters~~
13 noted in the record.

NOTE: The Board of Soil Classifiers is not precluded from keeping additional information. It is not statutorily necessary to require that the board retain an applicant's age and address.

- 14 2. ~~Annually as of January first submit to the governor a report of its transactions of the~~
15 ~~preceding year and shall transmit to the governor a complete statement of the receipts~~
16 ~~and expenditures of the board attested by affidavits of its chairman and its secretary.~~

NOTE: Section 54-10-27 addresses the financial oversight of occupational and professional boards. It states:

The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor, the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than fifty thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

As a result of Section 54-10-27, it is suggested that the requirement for an annual report to the Governor regarding the board's transactions be deleted.

See also, the note following Section 13.

1 **SECTION 13.** A new section to chapter 43-36 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Review of financial transactions.**

4 The board of soil classifiers shall provide for a review of its financial transactions at the time
5 and in the manner set forth in section 54-10-27.

NOTE: Although not statutorily necessary, it is suggested that this language be included as a reminder to the board and the registrants that financial oversight is required.

6 **SECTION 14.** A new section to chapter 43-36 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Soil classifier - Registration required.**

9 Before an individual may transact business as a soil classifier, the individual must be
10 registered with the board of soil classifiers.

11 **SECTION 15. AMENDMENT.** Section 43-36-10 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-36-10. General requirements for registration –Professional soil classifier.**

14 ~~To be eligible for registration as a professional soil classifier or certification as a soil~~
15 ~~classifier in training, an applicant must be of good character and reputation and shall submit a~~
16 ~~written application to the board containing such information as the board may require, together~~
17 ~~with three references, one of which must be from a professional soil classifier having personal~~
18 ~~knowledge of the applicant's soil classifying experience; or in the case of an application for~~
19 ~~certification as a soil classifier in training, by three character references.~~

20 In order to become registered as a soil classifier, an applicant shall:

- 21 1. Obtain from and file an application form with the board of soil classifiers:
- 22 2. Provide the names of three references, one of whom must:
 - 23 a. Be an individual registered with the board, in accordance with this chapter; and
 - 24 b. Have personal knowledge of the applicant's activities, as set forth in accordance
25 with subsection 5;

NOTE: Like current law, this subsection requires that one of the three listed references be a soil classifier who is registered in North Dakota and has the requisite personal knowledge of the applicant's activities. The committee may wish to consider whether this requirement is unduly burdensome for applicants coming from other states, especially given the small number of soil classifiers registered in this state.

- 26 3. Submit a transcript indicating that:

- 1 a. The applicant holds a baccalaureate or graduate degree in a science-related field
- 2 from an accredited institution of higher education; and
- 3 b. At least fifteen of the credits constituting the applicant's degree:
- 4 (1) Come from the list of qualifying soil-related courses, as set forth in
- 5 section 10; or
- 6 (2) Have been otherwise approved by the board;
- 7 4. Submit evidence of having achieved a passing score on a fundamentals of soil
- 8 science examination;
- 9 5. Submit documentation of experience in or exposure to:
- 10 a. The identification of soils, including hydric soils;
- 11 b. Soil surveys;
- 12 c. Preparation of reports pertaining to soil identification or soil surveys;
- 13 d. Identification of plant growth materials;
- 14 e. Septic system sitings;
- 15 f. Land reclamation; or
- 16 g. Other similar activities deemed by the board to be related to the classification of
- 17 soils; and
- 18 6. Obtain a passing score on a practical examination administered by the board,
- 19 provided:
- 20 a. There is a waiting period of at least three years between the date on which the
- 21 applicant completed the fundamentals of soil science examination and the date of
- 22 the practical examination; or
- 23 b. The board waives the waiting period set forth in subdivision a.

NOTE: Current law provides that an applicant for registration must have four years of experience if the applicant is a graduate of a soils curriculum approved by the Board of Soil Classifiers and eight years of experience if the applicant is a graduate of a soils curriculum not approved by the board. The committee may wish to consider the ramifications of a three-year waiting period.

24 **SECTION 16. AMENDMENT.** Section 43-36-11 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 ~~**43-36-11. Registration without examination -- Reciprocity.**~~

27 ~~An applicant otherwise qualified must be admitted to registration as a professional soil-~~
28 ~~classifier without examination upon payment of the required fees if:~~

1 four years or more, and a minimum of two years of soil classifying experience of a
2 character and grade which indicates to the board that the applicant is competent to
3 practice soil classifying.

NOTE: The qualifications for registration as a soil classifier have been incorporated in Section 15.

4 **SECTION 18. AMENDMENT.** Section 43-36-13 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 ~~**43-36-13. Qualifications of soil classifier in training.**~~

7 ~~Unless otherwise qualified, a person must be admitted to certification as a soil~~
8 ~~classifier in training, which certification is valid for four years, if the person is:~~

- 9 1. ~~A graduate of a soils curriculum approved by the board and has passed an~~
10 ~~examination in the fundamentals of soil classification; or~~
- 11 2. ~~An applicant who has completed a soils curriculum not approved by the board and~~
12 ~~who has a specific record of four years of soil classification experience of a grade and~~
13 ~~character satisfactory to the board and who passes an examination in the~~
14 ~~fundamentals of soil classification.~~

NOTE: As restructured, the position of a soil classifier-in-training would be eliminated.

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

17 ~~**43-36-14. Application for registration fee.**~~

18 ~~Application~~An application for registration as a professional soil classifier and for certification
19 ~~as a soil classifier in training must be on a form prescribed and furnished by the board, must~~
20 ~~contain statements made under oath showing the applicant's education, a detailed summary of~~
21 ~~the applicant's experience, and references as required by this chapter and must be~~
22 ~~accompanied by an application~~a fee established by the board of soil classifiers in an amount not
23 ~~less than fifty nor more than two hundred dollars. If the national test is administered, the amount~~
24 ~~may not exceed~~exceeding five hundred dollars.

NOTE: Because this chapter is part of a Legislative Management study, and not just a rewrite, it is appropriate for the committee to consider the fee increase suggested by representatives of the Board of Soil Classifiers.

25 **SECTION 20. AMENDMENT.** Section 43-36-15 of the North Dakota Century Code is
26 amended and reenacted as follows:

1 **43-36-15. Registration fees.**

2 1. ~~The board shall establish registration fees provided:~~

3 a. ~~The registration fee for in-state professional soil classifiers must be at least fifty-~~
4 ~~dollars but not more than~~ A soil classifier registered under this chapter shall pay
5 to the board of soil classifiers an annual fee in an amount established by the
6 board, but not exceeding three hundred dollars.

7 b. ~~The registration fee for in-state soil classifier in-training certification or enrollment~~
8 ~~must be at least twenty-five dollars but not more than one hundred dollars.~~

9 c. ~~The registration fee for out-of-state professional soil classifiers must be at least~~
10 ~~one hundred dollars but not more than three hundred dollars.~~

11 2. ~~If the board denies the issuance of a certificate to an applicant, the board shall retain-~~
12 ~~the application fee.~~

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

15 **43-36-16. Examinations.**

16 ~~Examinations must be held at such times and places as the board determines.~~

17 ~~Examinations required on fundamental soil subjects may be taken at any time prescribed by the~~
18 ~~board. The final examinations may not be taken until the applicant has completed a period of~~
19 ~~soil classifying experience as provided in this chapter.~~

20 1. The board of soil classifiers shall publish on its website the date on which, and the
21 time and location at which, the fundamentals of soil science examination will be
22 offered.

23 2. The board shall determine and publish on its website the date on which and the time
24 at which the practical examination will be administered. The board shall offer the
25 practical examination at least once each year.

26 3. Upon the request of an applicant, the board may administer a practical examination on
27 a date other than that required by subsection 2. The board may charge an additional
28 fee for an examination offered under this subsection.

29 4. The passing grade on anya practical examination may not be less thanis seventy
30 percent.¹

- 1 5. A candidate failing one examination may apply for reexamination, which may be
2 granted upon payment of a fee established by the board of not less than twenty-five
3 nor more than fifty dollars. Any candidate for registration having an average grade of
4 less than fifty percent may not apply for reexamination for a period of one year from
5 the date of such examination. If an individual does not receive a passing grade on a
6 practical examination, the individual may retake the examination, provided there is a
7 waiting period of at least one year from the date of the previous attempt. The board
8 may charge an additional fee for an examination offered under this subsection.
9 6. If an individual does not receive a passing grade after three attempts, the individual is
10 barred from retaking the examination for a period of ten years.²

NOTE:

¹Current law provides that the passing grade on any examination may not be less than 70 percent. This verbiage does not indicate whether the passing grade is 80 or 90 percent and what would cause it to fluctuate. The proposed language sets a passing grade of 70 percent.

²Current law is silent with respect to the number of times that an individual may repeat an examination.

Clarification is needed with respect to the passing grade on the fundamentals of soil science examination and the number of times that an individual may take this examination.

11 **SECTION 22. AMENDMENT.** Section 43-36-17 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-36-17. CertificatesCertificate of registration.**

14 ~~The board shall issue a certificate of registration upon~~Upon completion of all requirements
15 set forth in this chapter and payment of the registration fee as provided for in this chapter to any
16 applicant who in the opinion of the board has met the requirements of this chapter. Enrollment
17 cards must be issued to those who qualify as soil classifiers in training. Certificates of
18 registration must carry the designation "professional soil classifier", must show the full name of
19 the registrant without any titles, must be, the board of soil classifiers shall issue a numbered,
20 and must be certificate of registration that is signed by the chairman and the secretary under
21 the seal of the board. The issuance of aA certificate of registration by the board is prima facie
22 evidence that the personindividual named thereinin the certificate of registration is entitled to all
23 the rights and privileges of a professional soil classifier during the term for which the certificate
24 of registration is valid ~~providing the certificate has not been revoked or suspended.~~

NOTE: If a certificate of registration has been suspended or revoked, it is not "valid."

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

3 **43-36-18. Expirations and renewals.**

- 4 1. ~~Certificates~~A certificate of registration ~~expire on the last day of the month of~~issued
5 under this chapter expires on December following their issuance and become invalid
6 after that date unless renewed. It is the duty of the secretary of the board to notify
7 every personthirty-first of each year.
- 8 2. Before November first of each year, the board of soil classifiers shall notify each
9 individual registered under this chapter of the ~~date of the~~ expiration of said certificate
10 of registrationdate set forth in this section and the amount of the fee required for its
11 renewal. ~~Such notice must be mailed to the registrant at the registrant's last known~~
12 ~~address at least one month in advance of the expiration of said certificate. Renewal~~
13 ~~may be effected at any time prior to or during the month of December by the payment~~
14 ~~of a fee established by the board not to exceed the fees established for registration.~~
15 ~~Renewal of an expired certificate may be effected under rules promulgated by the~~
16 ~~board regarding requirements for reexamination and penalty fees~~ of the certificate of
17 registration.
- 18 3. The board shall send the notice:
- 19 a. Electronically; or
- 20 b. By first-class mail if requested by the soil classifier.
- 21 4. Any renewal occurring after December thirty-first is subject to a late fee in the amount
22 of twenty-five dollars.

NOTE: The reference to a \$25 late fee for failure to renew a certificate in a timely fashion is inserted for discussion purposes.

23 **SECTION 24. AMENDMENT.** Section 43-36-19 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **43-36-19. Reissuance of certificates**Certificate of registration - Replacement.

26 ~~A new~~If a certificate of registration ~~to replace any certificate lost, destroyed, or mutilated~~
27 ~~may be issued subject to the rules of the board. A reasonable charge must be made for such~~
28 ~~issuance~~needs to be replaced, the board of soil classifiers shall issue another. The board may
29 charge a replacement fee in an amount not exceeding twenty-five dollars.

NOTE: Current law provides that the Board of Soil Classifiers may charge a "reasonable" fee for a replacement certificate. The reference to a \$25 maximum replacement fee is inserted for discussion purposes.

1 **SECTION 25. AMENDMENT.** Section 43-36-20 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-36-20. Code of ethics - Distribution - Revisions.**

4 ~~The board shall cause to have prepared and shall adopt a code of ethics a copy of which~~
5 ~~must be delivered to every registrant and applicant for registration under this chapter. Such~~
6 ~~delivery constitutes due notice to all registrants. The board may revise and amend this code of~~
7 ~~ethics from time to time and shall forthwith notify each registrant in writing of such revisions and~~
8 ~~amendments. Such code of ethics when adopted applies to all certificate holders.~~ The board of
9 soil classifiers shall provide an electronic or a printed copy of the code of ethics to each
10 individual registered as a soil classifier and shall provide notification of any revision
11 electronically, or by first-class mail if requested by the soil classifier.

12 **SECTION 26. AMENDMENT.** Section 43-36-21 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **43-36-21. Disciplinary action - Revocations, suspensions, or reprimands.**

15 The board of soil classifiers ~~has the power to~~ may suspend, revoke, or refuse to renew or
16 ~~revoke the certificate of~~ the registration of, or reprimand any registrant who is guilty of any of the
17 ~~following a soil classifier if the individual:~~

- 18 1. Violated this chapter;
- 19 2. ~~The practice of fraud or deceit in obtaining a certificate of~~ Submitted false or misleading
20 information in connection with the application for registration;
- 21 ~~2.3. Any~~ Is found guilty of gross negligence, incompetence, or misconduct, in the practice of
22 soil classifying;
- 23 3. ~~Any offense determined by the board to have a direct bearing upon a registrant's~~
24 ~~ability to serve the public as a professional soil classifier, or the board determines,~~
25 ~~following conviction of any offense, that a registrant is not sufficiently rehabilitated~~
26 ~~under section 12.1-33-02.1 classification; or~~
- 27 4. ~~Violation of~~ Violated the code of ethics adopted and promulgated by the board.

NOTE: Current subsection 3 is eliminated because the Board of Soil Classifiers may not wish to have the burden of determining whether a particular offense has a direct bearing upon a registrant's ability to serve the public as a soil classifier or whether there has been sufficient rehabilitation.

1 **SECTION 27. AMENDMENT.** Section 43-36-22 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-36-22. Disciplinary action - Procedure.**

4 Any person may ~~prefer charges of fraud, deceit, gross negligence, incompetence,~~
5 ~~misconduct, or violation of the code of ethics against any individual registrant. Such charges~~
6 ~~must be in writing and must be sworn to by the person or persons making them and must be~~
7 ~~filed with the secretary of the board. All charges unless~~ file a complaint with the board of soil
8 classifiers regarding the activities of a registered soil classifier. Unless the complaint is
9 dismissed by the board as unfounded or trivial/frivolous, the complaint must be heard by the
10 board within three months after the date on which they have been preferred. The time and place
11 for said hearing must be fixed by the board and a copy of the charges together with a notice of
12 the time and place of hearing must be served upon the accused either personally or sent by
13 registered or certified mail to the last known address of such individual registrant at least thirty
14 days before the date fixed for hearing. At any hearing the accused registrant has the right to
15 appear in person or by counsel, or both, to cross-examine witnesses appearing against the
16 accused, and to produce evidence and witnesses in defense of the accused. If the accused
17 person fails or refuses to appear, the board may proceed to hear and determine the validity of
18 the charges. If after such hearing a majority of the board votes in favor of sustaining the
19 charges, the board shall make findings of fact, draw its conclusions and issue its order therein
20 and serve the same upon the accused. In said order the board may reprimand, suspend, refuse
21 to renew, or revoke the accused individual's certificate of registration. Any person who feels
22 aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that
23 person's certificate of registration may appeal therefrom to the district court under the
24 procedures provided by in accordance with chapter 28-32.

25 **SECTION 28. AMENDMENT.** Section 43-36-23 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-36-23. Right to practice.**

28 No person may practice or offer to practice professional soil classifying as defined by this
29 chapter unless the person is duly registered to practice under or exempt from the provisions of
30 this chapter.

NOTE: The concept set forth in Section 43-36-23 has been moved to Section 14.

1 **SECTION 29. 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 not be construed to~~does not prevent or affect:

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

NOTE: This subsection appears to authorize the issuance of a temporary registration to a nonresident performing a specific soil classification study. Representatives of the board indicated that this is not done and suggested that the language be deleted.

15 2. ~~The 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 practicing lawfully under~~
17 ~~subsection 1registered soil classifier, provided such work does not include final soil~~
18 ~~classifying decisions and is done under the direct supervision of and verified by a~~
19 ~~person holding a certificate of registration under this chapter or a person practicing~~
20 ~~lawfully under subsection 1that the work and any determinations are deemed to be~~
21 ~~those of the registered soil classifier.~~

NOTE: Current law creates an exemption for the work of an employee or subordinate, provided the work is done under the direct supervision of a registered soil classifier. Although direct supervision could be defined for purposes of this chapter, in most instances, direct supervision cannot not be verified. Following discussions with representatives of the Board of Soil Classifiers, this subsection has been reworded to provide that while an employee or subordinate may be performing certain tasks, the ultimate responsibility for the effort rests with the soil classifier.

22 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.

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

NOTE: A plain reading of this subsection would suggest that it provides an exceedingly broad exemption to this chapter's requirement for registration. The committee may wish to determine the precise nature and scope of this exemption and whether there is sufficient justification for exempting certain soil classifiers while requiring others to be registered.

6 **SECTION 30. AMENDMENT.** Section 43-36-25 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-36-25. Violation - Penalty.**

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

19 **SECTION 31. CONTINUING EDUCATION FOR SOIL CLASSIFIERS - REPORT TO**
20 **LEGISLATIVE MANAGEMENT.** Before July 1, 2016, the board of soil classifiers, in conjunction
21 with the director of the school of natural resource sciences at North Dakota state university, or
22 the director's designee, shall review advances in the field of soil classification, as well as
23 anticipated changes in the manner of classifying soils, with a view to determining the feasibility
24 and desirability of requiring continuing education as a condition of registration renewal for soil
25 classifiers. The board shall present its conclusions and recommendations to the legislative
26 management.