

Introduced by

1 A BILL for an Act to create and enact chapter 43-36.1 of the North Dakota Century Code,  
2 relating to soil classifiers; to amend and reenact subsection 28 of section 38-14.1-02 and  
3 subdivision t of subsection 1 of section 38-14.1-14 of the North Dakota Century Code, relating  
4 to soil classifiers; to repeal chapter 43-36 of the North Dakota Century Code, relating to soil  
5 classifiers; and to provide for a report to the Legislative Management.

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

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

9 28. "Soil classifier" means ~~a professional soil classifier as defined in subsection 4 of~~  
10 ~~section 43-36-01~~an individual registered with the board of soil classifiers in  
11 accordance with chapter 43-36.1.

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

14 t. A soil survey of all the suitable plant growth material within the permit area. Such  
15 survey must also locate and identify prime soils in the permit area. The survey  
16 must be made by ~~a professional soil classifier as described in subsection 4 of~~  
17 ~~section 43-36-01~~an individual registered with the board of soil classifiers in  
18 accordance with chapter 43-36.1.

**NOTE:** Chapter 38-14.1 pertains to surface mining and reclamation operations. In response to a question that was raised at the April 15, 2014, meeting of the interim Agriculture Committee, the cross reference changes in sections 1 and 2 of this Act are intended to maintain the current requirement that soil surveys be done by a "professional soil classifier"--i.e., by an individual who is "registered" in accordance with Chapter 43-36.1 and not by one who is "exempt" from the provisions of Chapter 43-36.1.

19 **SECTION 3.** Chapter 43-36.1 of the North Dakota Century Code is created and enacted as  
20 follows:

1       **43-36.1-01. Definition.**

2       1.   In this chapter, unless the context otherwise requires, "soil classification" means the  
3       determination of a soil's suitability for a particular purpose through:

- 4       a.   The examination of landscape and landform characteristics;  
5       b.   The sampling or analysis, or both, of soil properties and characteristics; and  
6       c.   The identification and description of soil profile characteristics, including soil  
7       horizons.

**NOTE:** It was suggested at the April 15, 2014, meeting of the interim Agriculture Committee that the committee might wish to consider adding the preparation of soil survey maps, the identification of plant growth material, and the identification of hydric soils to this subsection.

8       2.   The term "soil classification" does not include:

- 9       a.   The sampling and testing of soil for fertility status;  
10      b.   The sampling and testing of soil for the presence of construction materials;  
11      c.   The practice of architecture, as defined in chapter 43-03;  
12      d.   The practice of engineering, as defined in chapter 43-19.1, including the practice  
13      of environmental engineering;  
14      e.   The practice of landscape architecture, as defined in chapter 43-03; or  
15      f.   Water well contracting, water well pump and pitless unit installing, monitoring well  
16      contracting, and geothermal system drilling, if performed by persons certified in  
17      accordance with chapter 43-35.

**SOURCE:** Section 43-36-01.

**NOTE:** As suggested at the April 15, 2014, meeting of the interim Agriculture Committee, the practice of environmental engineering has been specifically referenced, as has water well contracting and its associated activities.

18      **43-36.1-02. Board of soil classifiers.**

- 19      1.   The board of soil classifiers consists of five individuals, three of whom must be soil  
20      classifiers registered under this chapter.  
21      2.   The governor shall appoint each member of the board.

**SOURCE:** Section 43-36-02.

22      **43-36.1-03. Terms of office - Vacancy.**

- 23      1.   The term of office for each member is five years and begins on July first.  
24      2.   The terms must be staggered so that no more than one term expires each year.  
25      3.   A member may not serve more than three consecutive terms.

- 1       4.   If an individual is appointed to fill a vacancy, that service is not counted as a term, for  
2           purposes of this section, unless the duration of that service exceeds two years.  
3       5.   If at any time during a member's term the member ceases to possess any of the  
4           qualifications required by this chapter, the member's office is deemed vacant and the  
5           governor shall appoint another individual for the remainder of the term.

**SOURCE:** Section 43-36-02.

**NOTE:** It was suggested at the April 15, 2014, meeting of the interim Agriculture Committee that the committee might wish to consider reducing the number of consecutive five year terms that could be served by board members from three to two.

6       **43-36.1-04. Board members - Compensation.**

- 7       Each member of the board of soil classifiers is entitled to receive compensation in the  
8       amount established by the board, but not exceeding one hundred thirty-five dollars per day, plus  
9       reimbursement for expenses as provided by law for state officers, if the member is attending  
10       meetings or performing duties directed by the board.

**SOURCE:** Section 43-36-04.

11       **43-36.1-05. Board members - Removal.**

- 12       Upon a showing of good cause, the governor may remove any member of the board of soil  
13       classifiers for misconduct, incompetency, or neglect of duty.

**SOURCE:** Section 43-36-05.

14       **43-36.1-06. Election of chairman - Meetings.**

- 15       1.   Annually, the board of soil classifiers shall elect one member to serve as the chairman.  
16       2.   The chairman shall call all meetings of the board and shall call a special meeting  
17           within seven days, if petitioned to do so by two members of the board.  
18       3.   The board shall meet at least once every six months.

**SOURCE:** Section 43-36-06.

19       **43-36.1-07. Board - Powers.**

20       The board of soil classifiers may:

- 21       1.   Expend moneys collected pursuant to this chapter for its administration;  
22       2.   Employ, bond, and compensate necessary personnel;  
23       3.   Accept gifts, grants, and donations of money, property, and services to carry out this  
24           chapter;  
25       4.   Contract with any person for any lawful purpose;  
26       5.   Sue and be sued; and

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

**SOURCE:** Section 43-36-07.

2        **43-36.1-08. Board - Duties.**

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

5        2. The board shall develop and make available on its website a list of each course, by  
6        name and number, which is:

7            a. Currently offered by an accredited institution of higher education in this state and  
8            in the bordering states; and

9            b. Determined by the board to provide academic preparation appropriate to the  
10          classification of soils.

**SOURCE:** New section.

11        **43-36.1-09. Receipts and disbursements.**

12        The board of soil classifiers shall deposit and disburse all moneys received under this  
13        chapter in accordance with section 54-44-12.

**SOURCE:** Section 43-36-08.

14        **43-36.1-10. Records.**

15        1. The board of soil classifiers shall keep a record of its proceedings.

16        2. The board shall keep a record of all applications for registration.

17        3. The board shall keep a record of:

18            a. Each applicant's education and experience, for purposes of taking action on an  
19            application;

20            b. The date and results of the applicant's fundamentals of soil science examination  
21            and practical examination; and

22            c. Whether the applicant was registered as a soil classifier in accordance with this  
23            chapter.

24        4. Any record required by this section is prima facie evidence of the matters noted in the  
25        record.

**SOURCE:** Section 43-36-09.

26        **43-36.1-11. Review of financial transactions.**

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

**SOURCE:** New section.

1 **43-36.1-12. Soil classifier - Registration required.**

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

**SOURCE:** New section.

4 **43-36.1-13. Requirements for registration.**

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

- 6 1. Obtain from and file an application form with the board of soil classifiers;
- 7 2. Provide the names of three references, one of whom must:
  - 8 a. Be an individual registered with the board, in accordance with this chapter; and
  - 9 b. Have personal knowledge of the applicant's activities, as set forth in accordance  
10 with subsection 5;
- 11 3. Submit a transcript indicating that:
  - 12 a. The applicant holds a baccalaureate or graduate degree, in a science-related  
13 field, from an accredited institution of higher education; and
  - 14 b. At least fifteen of the credits constituting the applicant's degree:
    - 15 (1) Come from the list of qualifying soil-related courses, as set forth in section  
16 43-36.1-08; or
    - 17 (2) Have been otherwise approved by the board;
- 18 4. Submit evidence of having achieved a passing score on a fundamentals of soil  
19 science examination;
- 20 5. Submit documentation of experience in or exposure to:
  - 21 a. The identification of soils, including hydric soils;
  - 22 b. Soil surveys;
  - 23 c. Preparation of reports pertaining to soil identification or soil surveys;
  - 24 d. Identification of plant growth materials;
  - 25 e. Septic system sitings;
  - 26 f. Land reclamation; or
  - 27 g. Other similar activities deemed by the board to be related to the classification of  
28 soils; and
- 29 6. Obtain a passing score on a practical examination administered by the board,  
30 provided:

- 1           a. There is a waiting period of at least three years between the date on which the  
2                   applicant completed the fundamentals of soil science examination and the date of  
3                   the practical examination; or  
4           b. The board waives the waiting period set forth in subdivision a.

**SOURCE:** Section 43-36-10.

5           **43-36.1-14. Application fee.**

6           An application for registration as a soil classifier must be accompanied by a fee, in an  
7           amount established by the board of soil classifiers, but not exceeding five hundred dollars.

**SOURCE:** Section 43-36-14.

8           **43-36.1-15. Registration fee.**

9           A soil classifier registered under this chapter shall pay to the board of soil classifiers an  
10           annual fee, in an amount established by the board, but not exceeding three hundred dollars.

**SOURCE:** Section 43-36-15.

11           **43-36.1-16. Examinations.**

- 12           1. The board of soil classifiers shall publish on its website the date on which, and the  
13                   time and location at which, the fundamentals of soil science examination will be  
14                   offered.  
15           2. The board shall determine and publish on its website the date on which and the time  
16                   at which the practical examination will be administered. The board shall offer the  
17                   practical examination at least once each year.  
18           3. Upon the request of an applicant, the board may administer a practical examination on  
19                   a date other than that required by subsection 2. The board may charge an additional  
20                   fee for an examination offered under this subsection.  
21           4. The passing grade on a practical examination is seventy percent.  
22           5. If an individual does not receive a passing grade on a practical examination, the  
23                   individual may retake the examination, provided there is a waiting period of at least  
24                   one year from the date of the previous attempt. The board may charge an additional  
25                   fee for an examination offered under this subsection.  
26           6. If an individual does not receive a passing grade after three attempts, the individual is  
27                   barred from retaking the examination for a period of ten years.

**SOURCE:** Section 43-36-16.

1       **43-36.1-17. Certificate of registration.**

2       Upon completion of all requirements set forth in this chapter and payment of the registration  
3 fee, the board of soil classifiers shall issue a numbered certificate of registration that is signed  
4 by the chairman. A certificate of registration is prima facie evidence that the individual named in  
5 the certificate of registration is entitled to all the rights and privileges of a soil classifier during  
6 the term for which the certificate of registration is valid.

**SOURCE:** Section 43-36-17.

7       **43-36.1-18. Expiration - Renewal.**

- 8       1. A certificate of registration issued under this chapter expires on December thirty-first of  
9       each year.
- 10      2. Before November first of each year, the board of soil classifiers shall notify each  
11      individual registered under this chapter of the expiration date set forth in this section  
12      and the amount of the fee required for renewal of the certificate of registration.
- 13      3. The board shall send the notice:
  - 14      a. Electronically; or
  - 15      b. By first-class mail if requested by the soil classifier.
- 16      4. Any renewal occurring after December thirty-first is subject to a late fee in the amount  
17      of twenty-five dollars.

**SOURCE:** Section 43-36-18.

18      **43-36.1-19. Certificate of registration - Replacement.**

19      If a certificate of registration must be replaced, the board of soil classifiers shall issue  
20 another. The board may charge a replacement fee in an amount not exceeding twenty-five  
21 dollars.

**SOURCE:** Section 43-36-19.

22      **43-36.1-20. Code of ethics - Distribution - Revisions.**

23      The board of soil classifiers shall provide an electronic or a printed copy of the code of  
24 ethics to each individual registered as a soil classifier and shall provide notification of any  
25 revision electronically, or by first-class mail if requested by the soil classifier.

**SOURCE:** Section 43-36-20.

1       **43-36.1-21. Complaint - Hearing.**

2       A person may file a complaint with the board of soil classifiers regarding the activities of a  
3 registered soil classifier. Unless the complaint is dismissed by the board as frivolous, the  
4 complaint must be heard by the board in accordance with chapter 28-32.

**SOURCE:** Section 43-36-22.

5       **43-36.1-22. Disciplinary action.**

6       The board of soil classifiers may suspend, revoke, or refuse to renew the registration of a  
7 soil classifier, if the individual:

- 8       1. Violated this chapter;
- 9       2. Submitted false or misleading information in connection with the individual's  
10       application for registration;
- 11       3. Is found guilty of gross negligence, incompetence, or misconduct, in the practice of  
12       soil classification; or
- 13       4. Violated the code of ethics adopted by the board.

**SOURCE:** Section 43-36-21.

14       **43-36.1-23. Exemptions.**

- 15       1. This chapter does not apply to an employee or a subordinate of a soil classifier  
16       registered in accordance with this chapter, provided the work and any determinations  
17       are deemed to be those of the soil classifier.
- 18       2. This chapter does not apply to an individual identifying hydric soils for purposes of  
19       wetland delineation, provided:
  - 20       a. (1) The individual is employed by this state;  
21       (2) The identification of hydric soils for purposes of wetland delineation occurs  
22       in the normal course of the individual's employment; and  
23       (3) The individual has completed a course in wetland delineation; or
  - 24       b. (1) The individual is employed by a private entity;  
25       (2) The identification of hydric soils for purposes of wetland delineation occurs  
26       in the normal course of the individual's employment;  
27       (3) The individual's employer takes legal responsibility for the work and  
28       determinations of the individual; and  
29       (4) The individual has completed a course in wetland delineation.

- 1       3. For purposes of this section, a course in wetland delineation must provide the student  
2       with a basic understanding regarding the interaction of vegetation, soils, and hydrology  
3       in wetlands and provide the student with the background necessary to identify  
4       wetlands and determine their boundaries. Courses meeting the requirements of this  
5       section include:  
6       a. Regulatory IV, a federal interagency training course in wetland identification and  
7       delineation, offered by the United States Army Corps of Engineers;  
8       b. Wetland delineation certification programs offered by accredited institutions of  
9       higher education or governmental agencies; and  
10      c. Any similar training or certification programs approved by the board.

**SOURCE:** Section 43-36-24.

**NOTE:** This section has been rewritten to reflect directives that an exemption be provided for certain individuals who are employed by the state and engage in wetland delineation and that there be an "industry" exemption for private employers.

11       **43-36.1-24. Violation - Penalty.**

12       Any individual who violates this chapter is guilty of a class B misdemeanor.

**SOURCE:** Section 43-36-25.

13       **SECTION 4. REPEAL.** Chapter 43-36 of the North Dakota Century Code is repealed.

14       **SECTION 5. CONTINUING EDUCATION FOR SOIL CLASSIFIERS - REPORT TO**

15       **LEGISLATIVE MANAGEMENT.** Before July 1, 2016, the board of soil classifiers, in conjunction  
16       with the director of the school of natural resource sciences at North Dakota state university, or  
17       the director's designee, shall review advances in the field of soil classification, as well as  
18       anticipated changes in the manner of classifying soils, with a view to determining the feasibility  
19       and desirability of requiring continuing education as a condition of registration renewal for soil  
20       classifiers. The board shall present its conclusions and recommendations to the legislative  
21       management.

**NOTE:** It was suggested at the April 15, 2014, meeting of the interim Agriculture Committee that the committee might wish to consider referencing private consultants who work in the area of soil classification, rather than or perhaps in addition to the Director of the School of Natural Resource Sciences at North Dakota State University.