

Introduced by

Legislative Management

(Agriculture Committee)

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.

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

21 **43-36.1-01. Definition.**

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

24 a. The examination of landscape and landform characteristics;

- 1 b. The sampling or analysis, or both, of soil properties and characteristics;
- 2 c. The identification and description of soil profile characteristics, including soil
- 3 horizons;
- 4 d. The identification of plant growth material; and
- 5 e. The identification of hydric soils.
- 6 2. The term "soil classification" does not include:
- 7 a. The sampling and testing of soil for fertility status;
- 8 b. The sampling and testing of soil for the presence of construction materials;
- 9 c. The practice of architecture, as defined in chapter 43-03;
- 10 d. The practice of engineering, as defined in chapter 43-19.1, including the practice
- 11 of environmental engineering;
- 12 e. The practice of landscape architecture, as defined in chapter 43-03; or
- 13 f. Water well contracting, water well pump and pitless unit installing, monitoring well
- 14 contracting, and geothermal system drilling, if performed by persons certified in
- 15 accordance with chapter 43-35.

16 **43-36.1-02. Board of soil classifiers.**

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

20 **43-36.1-03. Terms of office - Vacancy.**

- 21 1. The term of office for each member is five years and begins on July first.
- 22 2. The terms must be staggered so that no more than one term expires each year.
- 23 3. A member may not serve more than three consecutive terms.
- 24 4. If an individual is appointed to fill a vacancy, that service is not counted as a term, for
- 25 purposes of this section, unless the duration of that service exceeds two years.
- 26 5. If at any time during a member's term the member ceases to possess any of the
- 27 qualifications required by this chapter, the member's office is deemed vacant and the
- 28 governor shall appoint another individual for the remainder of the term.

29 **43-36.1-04. Board members - Compensation.**

30 Each member of the board of soil classifiers is entitled to receive compensation in the
31 amount established by the board, but not exceeding one hundred thirty-five dollars per day, plus

1 reimbursement for expenses as provided by law for state officers, if the member is attending
2 meetings or performing duties directed by the board.

3 **43-36.1-05. Board members - Removal.**

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

6 **43-36.1-06. Election of chairman - Meetings.**

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

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

10 3. The board shall meet at least once every six months.

11 **43-36.1-07. Board - Powers.**

12 The board of soil classifiers may:

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

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

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

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

18 5. Sue and be sued; and

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

20 **43-36.1-08. Board - Duties.**

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

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

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

27 b. Determined by the board to provide academic preparation appropriate to the
28 classification of soils.

29 **43-36.1-09. Receipts and disbursements.**

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

1 **43-36.1-10. Records.**

- 2 1. The board of soil classifiers shall keep a record of its proceedings.
3 2. The board shall keep a record of all applications for registration.
4 3. The board shall keep a record of:
5 a. Each applicant's education and experience, for purposes of taking action on an
6 application;
7 b. The date and results of the applicant's fundamentals of soil science examination
8 and practical examination; and
9 c. Whether the applicant was registered as a soil classifier in accordance with this
10 chapter.
11 4. Any record required by this section is prima facie evidence of the matters noted in the
12 record.

13 **43-36.1-11. Review of financial transactions.**

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

16 **43-36.1-12. Soil classifier - Registration required.**

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

19 **43-36.1-13. Requirements for registration.**

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;
26 3. Submit a transcript indicating that:
27 a. The applicant holds a baccalaureate or graduate degree, in a science-related
28 field, from an accredited institution of higher education; and
29 b. At least fifteen of the credits constituting the applicant's degree:
30 (1) Come from the list of qualifying soil-related courses, as set forth in section
31 43-36.1-08; or

- 1 (2) Have been otherwise approved by the board:
- 2 4. Submit evidence of having achieved a passing score on a fundamentals of soil
- 3 science examination;
- 4 5. Submit documentation of experience in or exposure to:
- 5 a. The identification of soils, including hydric soils;
- 6 b. Soil surveys;
- 7 c. Preparation of reports pertaining to soil identification or soil surveys;
- 8 d. Identification of plant growth materials;
- 9 e. Septic system sitings;
- 10 f. Land reclamation; or
- 11 g. Other similar activities deemed by the board to be related to the classification of
- 12 soils; and
- 13 6. Obtain a passing score on a practical examination administered by the board,
- 14 provided:
- 15 a. There is a waiting period of at least three years between the date on which the
- 16 applicant completed the fundamentals of soil science examination and the date of
- 17 the practical examination; or
- 18 b. The board waives the waiting period set forth in subdivision a.

19 **43-36.1-14. Application fee.**

20 An application for registration as a soil classifier must be accompanied by a fee, in an

21 amount established by the board of soil classifiers, but not exceeding five hundred dollars.

22 **43-36.1-15. Registration fee.**

23 A soil classifier registered under this chapter shall pay to the board of soil classifiers an

24 annual fee, in an amount established by the board, but not exceeding three hundred dollars.

25 **43-36.1-16. Examinations.**

- 26 1. The board of soil classifiers shall publish on its website the date on which, and the
- 27 time and location at which, the fundamentals of soil science examination will be
- 28 offered.
- 29 2. The board shall determine and publish on its website the date on which and the time
- 30 at which the practical examination will be administered. The board shall offer the
- 31 practical examination at least once each year.

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

4 4. The passing grade on a practical examination is seventy percent.

5 5. If an individual does not receive a passing grade on a practical examination, the
6 individual may retake the examination, provided there is a waiting period of at least six
7 months from the date of the previous attempt. The board may charge an additional fee
8 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 three years.

11 **43-36.1-17. Certificate of registration.**

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

17 **43-36.1-18. Expiration - Renewal.**

18 1. A certificate of registration issued under this chapter expires on December thirty-first of
19 each year.

20 2. Before November first of each year, the board of soil classifiers shall notify each
21 individual registered under this chapter of the expiration date set forth in this section
22 and the amount of the fee required for renewal of the certificate of registration.

23 3. The board shall send the notice:

24 a. Electronically; or

25 b. By first-class mail if requested by the soil classifier.

26 4. Any renewal occurring after December thirty-first is subject to a late fee in the amount
27 of twenty-five dollars.

28 **43-36.1-19. Certificate of registration - Replacement.**

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

1 **43-36.1-20. Code of ethics - Distribution - Revisions.**

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

5 **43-36.1-21. Complaint - Hearing.**

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

9 **43-36.1-22. Disciplinary action.**

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

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

18 **43-36.1-23. Exemptions.**

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

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

14 **43-36.1-24. Violation - Penalty.**

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

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

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

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