

# AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies.

Section 7 of 2013 House Bill No. 1026 directed a continued study of North Dakota Century Code provisions that relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

Section 10 of 2013 House Bill No. 1009 directed a study of the North Dakota Milk Marketing Board. Specifically, the committee was to examine the board's structure; its statutory duties; the manner in which it prescribes and regulates producer, distributor, and retail prices throughout the state; the manner in which it investigates and resolves concerns regarding the price and availability of milk throughout the state; and any policy or regulatory changes that the board has implemented, in order to address pricing issues and the availability of milk in the western portion of this state. The study was also to address whether the continued regulation of the Grade A dairy industry is best accomplished by the board in its current form and operating under its current statutory directives, whether changes are needed to the board or its statutory directives, and whether there are other methods by which the desired results could be effectively and efficiently achieved.

Section 2 of 2013 House Bill No. 1154 directed a study of those provisions of the Century Code that relate to professional soil classifiers, including their qualifications and examinations, and the powers and duties of the State Board of Registration for Professional Soil Classifiers, for the purpose of recommending changes to laws that are irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction.

The committee was directed to receive a report from the State Board of Agricultural Research and Education, regarding its annual evaluation of research activities and expenditures and a report from the Advisory Committee on Sustainable Agriculture, regarding the status of the committee's activities.

The committee was also directed to receive, from representatives of agricultural production groups, information regarding the effects of 2013 Senate Bill No. 2211 on various sectors of the agricultural industry, together with any suggestions for potential statutory changes. Senate Bill No. 2211 pertained to the treatment of animals.

Committee members were Representatives Jim Schmidt (Chairman), Bill Amerman, Tracy Boe, Chuck Damschen, Bob Hunsakor, Dennis Johnson, Dwight Kiefert, Diane Larson, David S. Rust, Wayne Trottier, and Margaret Wall and Senators Bill L. Bowman, Jim Dotzenrod, Robert Erbele, Larry Luick, and Joe Miller. Representative John Wall served as a member of the committee until his death in July 2014.

## **REWRITE OF CENTURY CODE PROVISIONS RELATING TO AGRICULTURE Objectives and Scope of Committee's Efforts**

The Century Code contains more than 90 chapters that pertain to agriculture. Many of the sections within those chapters contain material that is irrelevant, duplicative, inconsistent, illogically arranged, or otherwise unclear in its intent and direction. Ultimately, neither the agencies charged with administering the laws nor the members of the public to whom the laws apply have due notice of the requirements and expectations placed upon them. In 2007, against this backdrop, the Legislative Assembly called for a detailed examination of the state's agriculture laws, with the ultimate goal being to clean up, clarify, and consolidate the multitude of statutory directives within that topic area.

When the 2007-08 interim Agriculture Committee began its work, the committee determined that the nature and extent of the rewrite made amending current sections of the Century Code virtually impossible. The committee therefore directed that the rewrite create a new title that could accommodate the vast array of agricultural subjects and concepts in an organized and comprehensible fashion. To date, interim Agriculture Committees have rewritten the laws pertaining to noxious weeds, 12 agricultural commodity boards and commissions, agricultural seed, vegetable seed, flower seed, tree seed, seed potato control areas, potato certification, livestock branding, estrays, livestock dealers, and wool dealers. The 2013-14 Agriculture Committee undertook a rewrite of the laws pertaining to ginseng and apiaries. In conjunction with its studies of the North Dakota Milk Marketing Board and professional soil classifiers, the committee determined that any bills recommending changes to those chapters should likewise conform to the intent of the rewrite effort.

The 2013-14 committee supported the general premise that served as a guide for previous committees involved in rewriting existing statutes--i.e., that the goal was not to change policies that had been put in place by previous Legislative Assemblies, but rather to craft legislation that would clearly articulate rights, duties, obligations, and consequences and accurately reflect the manner in which business is conducted.

## Ginseng

### Background

American ginseng is a perennial plant generally found in the forested areas of the eastern United States. It is highly prized in east Asia because of its medicinal properties and is believed to lower blood pressure and cholesterol, reduce stress, and enhance strength. Ginseng requires full shade, approximately 40 inches of precipitation annually, and a highly organic soil with a low pH balance. Seeds take approximately 18 months to germinate and plants must grow for three to five years before they can be harvested. The annual value of ginseng grown in the United States is estimated to be \$27 million.

Because of overharvesting in the 1970s, ginseng is now protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This multilateral treaty is enforced in the United States by the Fish and Wildlife Service, which allows each state to regulate the harvest and trade of ginseng.

North Dakota has had a regulatory program in place since 1991. The program requires the registration of growers and dealers, provides for shipping certificates and various reporting forms, and authorizes inspections and enforcement actions. However, in the 23 years since the regulatory program was enacted, North Dakota has never reported a harvest. In fact, during that period, there have been only two registered growers and no registered dealer.

### Considerations - Conclusions

The committee questioned whether it is necessary to maintain an unused regulatory program and ultimately concluded that, due to an apparent lack of interest in growing ginseng, the existing language should be removed from the Century Code. However, the committee determined that, in the event an individual should ever wish to grow and market ginseng, the Agriculture Commissioner should be authorized to provide for the registration of persons buying and selling ginseng, the creation and maintenance of records, inspection requirements, and the issuance of any certificate or other documents required in accordance with state or federal law. Such an approach accommodates the various authorizations that a state must have, according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, in order to regulate ginseng.

### Recommendation

The committee recommends a bill [[15.0023.04000](#)] to rewrite those portions of the Century Code that pertain to ginseng.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-39-01	4.1-17-01
4-39-02	4.1-17-01
4-39-03	4.1-17-01
4-39-04	4.1-17-01
4-39-05	4.1-17-01
4-39-06	4.1-17-01
4-39-07	4.1-17-01

Proposed Section	Current Section
4.1-17-01	4-39-01 4-39-02 4-39-03 4-39-04 4-39-05 4-39-06 4-39-07

## Apiaries

### Background

North Dakota is the nation's leader in honey production. In 2012 North Dakota beekeepers produced over 34 million pounds of honey, which accounted for nearly one-quarter of the nation's total honey production and amounted to an economic infusion of \$64.5 million. Over 90 crops depend on insect pollinators, including almonds, berries, cotton, tree fruits, and various vegetables. In North Dakota, canola and sunflowers are the principal pollinated crops.

The latest statistics given to the committee indicated that North Dakota has 205 beekeepers, 11,050 apiaries, and approximately 482,560 colonies. Regulatory services are provided through the North Dakota Department of Agriculture by one full-time bee inspector, two seasonal bee inspectors, and one administrative assistant. North Dakota laws pertaining to apiaries were first enacted in 1923 and last reviewed by an interim committee in 1983.

**Considerations**

During the 2013-14 interim, the committee worked closely with the State Bee Inspector to clarify definitions, streamline the licensing and hive identification process, address issues of landowner permission in connection with the placement of apiaries, articulate the duties and powers of the State Bee Inspector, and clearly delineate legal parameters in the event that hives are found to be abandoned or require seizure or quarantine. The State Bee Inspector served as the committee's liaison with beekeepers who traditionally move their hives out of North Dakota in order to provide crop pollination services within other agricultural growing cycles.

**Recommendation**

The committee recommends a bill [[15.0032.05000](#)] to rewrite those portions of the Century Code that pertain to apiaries.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-12.2-01	4.1-16-01
4-12.2-02	Omitted - Unnecessary
4-12.2-04	4.1-16-02
	4.1-16-04
4-12.2-04.1	4.1-16-03
4-12.2-05	4.1-16-06
4-12.2-06	4.1-16-07
4-12.2-07	4.1-16-08
4-12.2-08	Omitted - Unnecessary
4-12.2-08.1	4.1-16-18
4-12.2-14	4.1-16-09
4-12.2-15	Omitted - Unnecessary
4-12.2-16	4.1-16-12
	4.1-16-13
4-12.2-18	4.1-16-13
4-12.2-18.1	4.1-16-15
4-12.2-18.2	Omitted - Unnecessary
4-12.2-20	Omitted - Unnecessary
4-12.2-21	4.1-16-10
4-12.2-22	4.1-16-05
	4.1-16-17
4-12.2-23	4.1-16-11
4-12.2-24	4.1-16-16
4-12.2-25	Omitted - Unnecessary

Proposed Section	Current Section
4.1-16-01	4-12.2-01
4.1-16-02	4-12.2-04
4.1-16-03	4-12.2-04.1
4.1-16-04	4-12.2-04
4.1-16-05	4-12.2-22
4.1-16-06	4-12.2-05
4.1-16-07	4-12.2-06
4.1-16-08	4-12.2-07
4.1-16-09	4-12.2-14
4.1-16-10	4-12.2-21
4.1-16-11	4-12.2-23
4.1-16-12	4-12.2-16
4.1-16-13	4-12.2-16
	4-12.2-18
4.1-16-14	New law
4.1-16-15	4-12.2-18.1
4-12.2-16	4-12.2-24
4-12.2-17	4-12.2-22
4-12.2-18	4-12.2-08.1

**North Dakota Milk Marketing Board Study**

**Background**

The domestication of milk-producing animals has an anthropological history that covers thousands of years. Such animals were part of the subsistence farming efforts engaged in by nomadic tribes and the animals' protection and feeding nurtured the symbiotic relationship between the animals and the herders. In more recent societies, dairy

animals not only produced milk for the use of individuals and collectives or villages, but also served in multifaceted roles that included functioning as draught animals and toward the end of their lives, as meat.

The actual commercialization of milk production came with industrialization and urbanization. So too did governmental intervention in the milk markets. The Capper-Volstead Act of 1922 provided a limited antitrust exemption for United States dairy cooperatives and in the ensuing decade, states began to adopt price controls. It was at that same time that federal milk marketing orders came into being.

Today, milk and dairy product pricing is either market-determined or administratively determined through a variety of public sector programs and policies. In addition to the federal milk marketing orders and price supports, there are import restrictions, export subsidies, domestic and international food aid programs, state-level milk marketing programs and since 1996, a multistate milk pricing organization. The list of interventions would not be complete without mention of the Chicago Mercantile Exchange, where wholesale dairy product prices are determined and futures and options contracts for milk and dairy products are traded.

### **Federal Milk Marketing Orders**

The marketing of milk has several complicating factors. Milk is produced daily. It is perishable. It is bulky and expensive to transport and the production and retail cycles require reserves. Federal milk marketing orders were and continue to be one method by which consumers can be ensured of having an adequate supply of fresh and wholesome fluid milk and dairy producers can be guaranteed stable and reliable milk markets. These ends are achieved through the promotion and maintenance of orderly milk marketing conditions.

Federal milk marketing orders are put into place at the request of local dairy producers and their cooperatives and funded by the milk handlers. No tax dollars are directed toward their support.

Federal milk marketing orders classify milk according to its use, establish minimum prices that regulated milk buyers pay for milk, pool milk receipts and determine a blend or uniform price to be paid to dairy producers, establish regulations or pooling requirements to determine what milk is eligible to receive the blend price, ensure that milk is accurately tested, weighed, and classified, and provide useful market information. Federal milk marketing orders do not establish minimum retail prices, guarantee a dairy farmer a milk market or a profitable milk price, control milk production, or establish quality requirements.

Milk is a classified product. Class I milk is used for bottling. Class II milk is used for creams and soft manufactured products. Class III milk is used for cheese, and Class IV milk is used for butter and powder. Under a classified marketing system, handlers would pay for milk based on how it was used. Milk sold for bottling has a much higher value than milk sold for use in cheese and butter production. Under a pooling system, the total classified value of milk within a marketing area is "pooled" and producer price differentials are used to ensure that all producers within the pool share equally in the market utilization.

Portions of North Dakota have participated in federal milk marketing orders since 1967. The original Minnesota-North Dakota Federal Order included Fargo, Moorhead, Grand Forks, Thief River Falls, and the surrounding milk sheds. In June 1976, that order merged with orders covering Minneapolis-St. Paul, Duluth-Superior, and Southeastern Minnesota-Northern Iowa to form the Upper Midwest Federal Order. In 2000 the Upper Midwest Federal Order merged with the Chicago Regional Order and was renamed the Upper Midwest Order or Federal Order No. 30. Today, the eastern counties of Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, LaMoure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steel, Traill, and Walsh participate in that order.

In 2004, 169 million pounds of North Dakota milk were pooled under Federal Order No. 30. That amounted to 36 percent of North Dakota's milk production and 1 percent of the order's total production. In 2013, 226 million pounds of North Dakota milk were pooled under Federal Order No. 30. That amounted to 66 percent of North Dakota's production and 0.7 percent of the order's total production.

The committee was told that if a dairy farmer in the western two-thirds of North Dakota marketed approximately 1 million pounds of milk per month under the jurisdiction of Federal Order No. 30, rather than under the individual handler pool pricing system, the bottling plant that accepted the producer's milk would still be paying the same amount, but that money would be taken and shared among producers throughout the entire federal order. A dairy farmer who resides south of Mandan indicated that he milks 600 cows three times per day. He said, if he had to market his milk under Federal Order No. 30, his personal economic loss would have been \$330,000 last year. He estimated that the total annual loss to western North Dakota producers would be \$1.6 million.

Given the size of the economic impact, the committee questioned why dairy producers in the eastern portion of the state did not simply extricate themselves from the federal order. Thirty years ago, North Dakota dairy producers came to the Legislative Assembly for a resolution asking that the Governor and the Congressional delegation assist them in

so doing. Unfortunately, federal law requires a vote of all those affected before an order can be changed. Of the 13,000 producers in Federal Order No. 30, North Dakota producers number approximately 100.

### **North Dakota Milk Marketing Board**

The regulatory program governing the marketing of milk in the western two-thirds of North Dakota came into being in 1967, with the formation of the North Dakota Milk Marketing Board. Two years later, the Legislative Assembly provided for some amendments and the chapter has stayed relatively untouched since that time.

The first section of the chapter begins with 13 declarations, including the fact that milk is a necessary article of food for human consumption and that its production, transportation, processing, storage, distribution, and sale is an industry affecting the public health and interest. It also provides that "unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, milk products, and frozen dairy products, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk." In order to prevent the occurrence and reoccurrence of such conditions and practices, the section declares that it is necessary to invoke the police powers of the state to provide constant supervision and regulation of the milk industry. The stated purpose of the chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. In order to accomplish this, a five-member board is created and given the authority to supervise, investigate, and regulate every segment of the state's dairy industry. The only exceptions are matters of health and sanitation, which are under the purview of other governmental agencies, and the sale of raw milk that is not Grade A. The board consists of a dairy producer, a processor, a retailer, and two consumers, all appointed by the Governor.

By statute, the North Dakota Milk Marketing Board is required to designate milk marketing areas that cover the entire state and to establish uniform minimum prices that processors must pay to dairy producers for raw milk. The prices are to reflect the available supply of raw milk, the adequacy of the reserve supply of raw milk, the balance between production and consumption, the cost of dairy feed, farm wage rates, and other factors, as appropriate. Furthermore, the board must ensure that the minimum prices are beneficial to the public interest, protect dairy producers, and preserve an adequate supply of pure and wholesome milk to the inhabitants of this state. The board must also establish, for each marketing area, the minimum prices for sales of milk products by processors or distributors to retailers and for sales of milk products by any person to consumers.

In addition to the mandatory setting of prices, the board is authorized to establish minimum prices for sales of milk products by processors to distributors; sales of frozen dairy products by a processor, distributor, or retailer to any person; sales of milk products by a processor to another processor or by a distributor to another distributor; and sales of milk products or frozen dairy products not otherwise previously addressed. The board is also authorized to establish the maximum prices for which milk products may be sold by a processor, a distributor, or a retailer to any person.

The Century Code requires the board to administer a process for licensing dairy producers, processors, distributors, and retailers and it establishes various criteria that must be met, prior to the issuance of a license. The Century Code also requires the board to prohibit or regulate disruptive trade practices and provides an illustrative, but not an exclusive, list of what those practices could entail.

The North Dakota Milk Marketing Board is supported through an assessment paid by licensed processors. The amount of the assessment is 14 cents per hundredweight on milk or milk equivalents used in the manufacturing of milk products and frozen dairy products.

### **Consideration**

As the committee reviewed the existing statutes and listened to concerns articulated about the North Dakota Milk Marketing Board, it could find no indication that the board operated outside of its statutory authority. Having concluded that, the next point of inquiry was whether the statutory authority was still appropriate, nearly one-half century after it was first enacted. In order to do that, the committee had to overcome the hurdle of interminable sentences in interminable paragraphs that precluded readily discernible content. The committee asked for a rewrite of the chapter so that it and others interested in the chapter could more readily determine whether changes were needed, and if so, what those changes could, would, or should be.

The clarification provided by the rewrite then allowed the committee to focus on what it believed was the undercurrent of discontent regarding the marketing of milk in North Dakota--i.e., the existing licensure process and specifically, the licensing of distributors. Licensure is accomplished by means of an application process. Within 30 days of receiving an application, the North Dakota Milk Marketing Board must either issue the requested license or notify the applicant of the date and time at which a hearing will be held to receive evidence relative to the application.

With respect to distributor licenses, the North Dakota Milk Marketing Board has the statutory authority to deny licensure if it determines that:

- Persons currently licensed by the board are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state;
- Deliveries are being made with sufficient regularity and frequency; and
- The issuance of additional distributor licenses will result in an excess of processing plant capacity, tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board, or otherwise tend to prevent achievement of the chapter's objectives.

In addition to requiring that the North Dakota Milk Marketing Board make determinations regarding the matter addressed in the preceding paragraph, the Century Code also requires that, as a condition of receiving a distributor's license, an applicant declare that he or she:

- Will not sell milk products or frozen dairy products to any person who is not licensed in accordance with the chapter;
- Will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with the chapter;
- Will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who desires to purchase such products from the distributor and has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products; and
- Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.

The committee was made aware of one applicant for a distributor's license who refused to make the required declarations on the application. The applicant indicated that, without having his sales staff canvass the area for potential clients, a declaration of the sort currently required would be purely speculative. He indicated that his company is permitted to distribute milk to its clients in 22 of the 23 states it serves. North Dakota is the exception. The company in question offers 14,000 to 15,000 products to its customers, including cigarettes and tobacco products, beverages, candy, groceries, health and beauty products, food service components, automotive products, and store supplies, including can liners, toilet tissue, paper towels, floor cleaners, etc. He indicated that while the company requires a minimum order, the array of products that it carries does not make the requirement burdensome.

The committee was told that there are 78 distributors in the state and while adding one additional distributor might not have a significant impact, relaxing the qualifications for a distributor's license would enable a host of other equally qualified companies to request licensure as well.

The committee determined that the North Dakota Milk Marketing Board had its genesis because of the need to ensure the availability of fluid milk at a price that balanced the interests of producers, consumers, and all entities in between. The committee was cognizant of stated concerns about large distributors wanting to provide goods and services to more lucrative accounts along well-traveled routes, but perhaps being less committed to lower-volume accounts in the more remote regions of this state. The committee ultimately determined that while changes to the licensure of distributors could provide benefits and opportunities, there was also an outside possibility that there might be certain detrimental effects. Without sufficient evidence to conclusively determine the nature and scope of such effects, the committee concluded that the most appropriate approach would be to offer a more streamlined and comprehensible chapter so that those who wished to pursue changes could more readily do so and that those who needed to understand the actions of the North Dakota Milk Marketing Board, as they related to any potential changes, would likewise be better prepared to evaluate any and all future proposals.

**Recommendation**

The committee recommends a bill [[15.0082.04000](#)] to rewrite those portions of the Century Code that pertain to the North Dakota Milk Marketing Board.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
4-18.1-01	Omitted - Unnecessary
4-18.1-02	Omitted - Unnecessary
4-18.1-03	4.1-26-01
4-18.1-04	4.1-26-02
	4.1-26-03
	4.1-26-04

Current Section	Proposed Section
4-18.1-05	4.1-26-05 4.1-26-06 4.1-26-07 4.1-26-06 4.1-26-08
4-18.1-06	4.1-26-09
4-18.1-07	4.1-26-10 4.1-26-11 4.1-26-12 4.1-26-13 4.1-26-14 4.1-26-15 4.1-26-16
4-18.1-08	4.1-26-17 4.1-26-18 4.1-26-20 4.1-26-23 4.1-26-25 4.1-26-26
4-18.1-09	4.1-26-19 4.1-26-24
4-18.1-10	4.1-26-30
4-18.1-11	4.1-26-31
4-18.1-12	4.1-26-27
4-18.1-13	Omitted - Unnecessary
4-18.1-14	4.1-26-27 4.1-26-29 4.1-26-32
4-18.1-15	4.1-26-28
4-18.1-16	Omitted - Unnecessary
4-18.1-17	4.1-26-22 4.1-26-33 4.1-26-34
4-18.1-18	4.1-26-36 4.1-26-21
4-18.1-19	4.1-26-35
4-18.1-20	4.1-26-35
4-18.1-21	4.1-26-35
4-18.1-22	Omitted - Unnecessary
4-18.1-23	Omitted - Unnecessary

Proposed Section	Current Section
4.1-26-01	4-18.1-03
4.1-26-02	4-18.1-04
4.1-26-03	4-18.1-04
4.1-26-04	4-18.1-04
4.1-26-05	4-18.1-04
4.1-26-06	4-18.1-04
4.1-26-07	4-18.1-05
4.1-26-08	4-18.1-04
4.1-26-09	4-18.1-05
4.1-26-10	4-18.1-06
4.1-26-11	4-18.1-07
4.1-26-12	4-18.1-07
4.1-26-13	4-18.1-07
4.1-26-14	4-18.1-07
4.1-26-15	4-18.1-07
4.1-26-16	4-18.1-07
4.1-26-17	4-18.1-08
4.1-26-18	4-18.1-08
4.1-26-19	4-18.1-09
4.1-26-20	4-18.1-08
4.1-26-21	4-18.1-18
4.1-26-22	4-18.1-17
4.1-26-23	4-18.1-08
4.1-26-24	4-18.1-09

Proposed Section	Current Section
4.1-26-25	4-18.1-08
4.1-26-26	4-18.1-08
4.1-26-27	4-18.1-12
4.1-26-28	4-18.1-15
4.1-26-29	4-18.1-14
4.1-26-30	4-18.1-10
4.1-26-31	4-18.1-11
4.1-26-32	4-18.1-14
4.1-26-33	4-18.1-17
4.1-26-34	4-18.1-17
4.1-26-35	4-18.1-18
	4-18.1-19
	4-18.1-20
	4-18.1-21
4.1-26-36	4-18.1-17

## Soil Classifiers

### Background

As humans, we tend to classify and categorize things that we find in the natural world. Whether it be rocks, soils, landscapes, or living things on the land and in the water, there are systems of classification that exist to describe these in uniform terms. These systems enable us to communicate with each other in terms that are understandable and consistent. They allow us to use descriptions in a way that can be understood by those in remote locations and without direct experience of the subject. (See, <http://passel.unl.edu>)

When classifying a ponderosa pine or an Abert's squirrel, the entity is readily recognizable. When classifying soils, however, a challenge exists in that the nature and properties of soils can vary widely from one location to the next, and even within distances of a few yards. Because of these challenges, a relatively new soil classifiers association brought forth, in 1973, legislation that would recognize soil classification as a profession and establish thresholds for entry into the profession. Senate Bill No. 2122 (1973) was ultimately codified as Chapter 43-36. Forty years after its enactment, the chapter remains largely unchanged.

The committee began its study with two conceptually basic queries: What is a soil classifier and what does a soil classifier do.

Current law defines a soil classifier as:

[A] person who by reason of that person's special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soils education and soil classification experience in the formation, morphology, description, and mapping of soils is qualified to practice soil classifying and who has been duly registered by the state board of registration for professional soil classifiers.

Current law defines soil classification as:

[A]ny service or work the adequate performance of which requires education in the physical, chemical, biological, and soil sciences, training and experience in the application of the special knowledge of these sciences to soil classification, the soil classification by accepted principles and methods, investigation, evaluation, and consultation on the effect of measured, observed, and inferred soil properties upon the various uses, the preparation of soil descriptions, maps and reports and interpretive drawings, maps and reports of soil properties and the effect of soil properties upon the various uses, and the effect of the various uses upon kinds of soil, any of which embraces such service or work either public or private incidental to the practice of soil classifying.

After reviewing the statutory language and posing the aforesaid questions to members of the State Board of Registration for Professional Soil Classifiers, the committee found itself still quite perplexed. What the committee was able to discern from initial testimony is that the number of individuals currently functioning as registered soil classifiers is exceedingly small, that the time and experiential requirements for becoming a soil classifier are exceedingly long, and that there is significant disagreement with respect to whether certain activities require the training and expertise of a registered soil classifier or whether they could be successfully conducted by others having a lesser level of training and experience.

## **How to Become a Soil Classifier - Current Law**

Current law provides multiple paths that an individual can take in order to become a soil classifier. Each path requires that the individual pass an examination in the principles and practice of soil classifying, as prescribed by the State Board of Registration for Professional Soil Classifiers.

If an individual is a graduate of a "soils curriculum approved by the board as satisfactory," that individual must demonstrate a "specific record of an additional four years or more of experience of a grade and character which indicates to the board that the applicant is competent to practice soil classifying." A soil classifier-in-training certificate is also required. (A soil classifier-in-training certificate may be obtained by an individual who passes an examination in the fundamentals of soil classification and is a graduate of a soils curriculum approved by the board. If the individual successfully completed the examination but graduated from a soils curriculum that is not approved by the board, the individual must have "a specific record of four years of soil classification experience of a grade and character satisfactory to the board.")

If an individual is a graduate of a soils curriculum not approved by the board, the individual must have at least eight years of experience in soil classifying work. Again, that work must be "of a character and grade which indicates to the board that the applicant is competent to practice soil classifying."

If an individual holds a soil classifier-in-training certificate, the individual must have a specific record of four years or more of experience as a soil classifier-in-training "of a grade and character which indicates to the board that the applicant is competent to practice soil classifying."

Finally, if a person has at least four years of experience in soil classification research or at least four years of experience as a "teacher of soils" in a college or university that offers an approved soils curriculum, and has at least two years of soil classifying experience meeting the grade and character requirements as set forth above, that individual may obtain entry into the profession.

## **Committee Considerations**

While the State Board of Registration for Professional Soil Classifiers maintained that the currently required level of education and experience is justified in order to ensure competency and professionalism within the ranks, the committee questioned the efficacy of the requirements, especially since a Doctor of Medicine degree (M.D.) is awarded upon the successful completion of a four-year undergraduate program and four years of medical school. With only 16 registered soil classifiers still practicing, the committee articulated its concern that the time required to repopulate the ranks could in fact lead to this profession's ultimate demise.

In accordance with the study directive, the committee asked to be presented with a bill that addressed irrelevancy, inconsistency, and illogicality, while at the same time modernizing and clarifying the governing statutes.

The bill began by articulating that soil classification means the determination of a soil's suitability for a particular purpose through:

- The examination of landscape and landform characteristics;
- The sampling or analysis, or both, of soil properties and characteristics;
- The identification and description of soil profile characteristics, including soil horizons;
- The identification of plant growth material; and
- The identification of hydric soils.

Concomitantly, the bill draft provided that soil classification did not include:

- The sampling and testing of soil for fertility status;
- The sampling and testing of soil for the presence of construction materials;
- The practice of architecture;
- The practice of engineering;
- The practice of landscape architecture; or
- Water well contracting, water well pump and pitless unit installing, monitoring well contracting, and geothermal system drilling.

The bill maintained regulatory authority in a five-member board.

In order to become a soil classifier, it was proposed that one hold a baccalaureate or a graduate degree, in a science-related field, from an accredited institution of higher education. At least 15 of the credits constituting the degree would have to come from a list of qualifying soil-related courses or be approved by the board.

An applicant would have to submit evidence of having achieved a passing score on a fundamentals of soil science examination and submit documentation of experience in or exposure to the identification of soils, soil surveys, the preparation of reports pertaining to soil identification or soil surveys, the identification of plant growth materials, septic system sitings, land reclamation, or other similar activities deemed by the board to be related to the classification of soil. Finally, the individual would have to obtain a passing score on a practical examination administered by the board. In order to ensure that there was ample time for experiential learning, the board suggested that, unless waived, there must be a waiting period of at least three years between the date on which the applicant completed the fundamentals of soil science examination and the date of the practical examination.

The committee heard testimony from a number of soil classifiers regarding their education, their training, and the special skills they believed were required in order to correctly and accurately classify soils. The committee also heard testimony regarding ways in which individuals could be trained to perform certain limited but clearly delineated tasks, and the committee heard testimony regarding the need for an employer's exemption.

After due consideration, the committee directed that the bill exempt from the chapter certain individuals who identify hydric soils for purposes of wetland delineation. In order to be eligible for the first exemption, the individual must be employed by this state, must perform the identification of hydric soils within the normal course of the individual's employment, and must have completed a course in wetland delineation. In order to be eligible for the second exemption, the individual must be employed by a private entity and must perform the identification of hydric soils within the normal course of the individual's employment. The individual's employer must take legal responsibility for the work and determinations of the individual, and the individual must have completed a course in wetland delineation. The course, as referenced with respect to both exemptions, must provide the student with a basic understanding regarding the interaction of vegetation, soils, and hydrology in wetlands and provide the student with the background necessary to identify wetlands and determine their boundaries. Courses meeting these requirements are generally about 40 hours in length and offered by accredited institutions of higher education or governmental agencies.

**Recommendation**

The committee recommends a bill [\[15.0010.05000\]](#) to rewrite those portions of the Century Code that pertain to the State Board of Registration for Professional Soil Classifiers.

The following cross-reference tables indicate the sources and placement of the proposed content.

Current Section	Proposed Section
43-36-01	43-36.1-01
43-36-02	43-36.1-02
	43-36.1-03
43-36-03	Omitted - Unnecessary
43-36-04	43-36.1-04
43-36-05	43-36.1-05
43-36-06	43-36.1-06
43-36-07	43-36.1-07
43-36-08	43-36.1-09
43-36-09	43-36.1-10
43-36-10	43-36.1-13
43-36-10.1	Omitted - Unnecessary
43-36-11	Omitted - Unnecessary
43-36-12	43-36.1-13
43-36-13	Omitted - Unnecessary
43-36-14	43-36.1-14
43-36-15	43-36.1-15
43-36-16	43-36.1-16
43-36-17	43-36.1-17
43-36-18	43-36.1-18
43-36-19	43-36.1-19
43-36-20	43-36.1-20
43-36-21	43-36.1-22
43-36-22	43-36.1-21
43-36-23	43-36.1-24
43-36-24	43-36.1-25
43-36-25	43-36.1-01

Proposed Section	Current Section
43-36.1-01	43-36-01
43-36.1-02	43-36-02
43-36.1-03	43-36-02
	43-36-05
43-36.1-04	43-36-04
43-36.1-05	43-36-05
43-36.1-06	43-36-06
43-36.1-07	43-36-07
43-36.1-08	New section
43-36.1-09	43-36-08
43-36.1-10	43-36-09
43-36.1-11	New section
43-36.1-12	New section
43-36.1-13	43-36-10
	43-36-12
43-36.1-14	43-36-14
43-36.1-15	43-36-15
43-36.1-16	43-36-16
43-36.1-17	43-36-17
43-36.1-18	43-36-18
43-36.1-19	43-36-19
43-36.1-20	43-36-20
43-36.1-21	43-36-22
43-36.1-22	43-36-21
43-36.1-23	43-36-24
43-36.1-24	43-36-25

### ADDITIONAL RECOMMENDATION

Since the inception of the effort to rewrite Century Code sections that pertain to agriculture, interim committees have at times been given the flexibility to determine which chapters would be subjected to the rewrite process. At other times, interim committees have been directed to study specific issues, rather than to focus solely on rewriting the various sections and chapters. While the latter tends to consume more of a committee's time, both provide opportunities to achieve clarity, consolidation, and modernization of the statutes. Ultimately, a law that clearly articulates rights, powers, duties, and consequences provides due notice to those affected by it, provides a framework for those charged with its administration, and reduces conflicts of interpretation.

The committee acknowledged the importance of the rewrite effort, as well as the results to date.

The committee recommends a bill [[15.0270.01000](#)] to continue the study of Century Code provisions that relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

### REPORTS

The committee received a report from the State Board of Agricultural Research and Education. In accordance with Section 4-05.1-19, the board examined adverse economic impacts on crops and livestock, developed ongoing strategies for the provision of research solutions and resources to negate such adverse economic impacts, and developed ongoing strategies for the dissemination of research information through the North Dakota State University Extension Service. The board also established the 2015 priorities for both the Agricultural Experiment Station and the Extension Service.

The Advisory Committee on Sustainable Agriculture did not meet during the 2013-14 interim and therefore did not submit a report, as required by Section 4-01-24.

The committee received, from a representative of agricultural production groups, information regarding the effects of 2013 Senate Bill No. 2211 on various sectors of the agricultural industry. Senate Bill No. 2211 pertained to the humane treatment of animals.