15.0010.06000

FISCAL NOTE
Requested by Legislative Council
12/20/2014

Amendment to: SB 2026

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	$0	$0	$0
Cities	$0	$0	$0
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2026 was written to modernize and clarify the language of North Dakota Professional Soil Classifier law as written in North Dakota Century Code 43-36. No fiscal impact in SB 2026 provisions are projected.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Board of Registration activities are funded solely by exam and registration fees. There are no provisions in SB 2026 that request funding. There are no provisions in SB 2026 that will result in any negative or positive fiscal impacts on any state agency compared to current law other than the Board itself.

Provision 43-36.1-23 (2) exemption for hydric soil identification will result in additional administrative activities for the Board. Additional expenses incurred by the Board are estimated at $2,000 annually to administer the exemption. Unfortunately, since this is an exemption it will be an expense for the Board with no additional revenue since this does not involve examination or registration. If expenses exceed revenues from examination and registration and deplete Board of Soil Classifiers reserves then potentially revenues will need to be replenished either by future appropriation request or provisions for fees to administer the exemption. At this time no appropriation request can be anticipated.

The Board is not aware of any fiscal impacts to the state or political subdivisions by the provisions of SB 2026.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Hal Weiser

Agency: Board of Registration Professional Soil Classifier

Telephone: 701-952-9049

Date Prepared: 01/05/2015

15.0010.05000

FISCAL NOTE
Requested by Legislative Council
12/20/2014

Bill/Resolution No.: SB 2026

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
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Cities	$0	$0	$0
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Name: Hal Weiser

Agency: Board of Registration Professional Soil Classifier

Telephone: 701-952-9049

Date Prepared: 01/05/2015

2015 SENATE AGRICULTURE

SB 2026

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2026
1/29/2015
Job # 22795

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Emmery Brotherson

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers

Minutes: *Attachments: #1-8*

Chairman Miller opened the hearing on SB 2026

Anita Thomas, ND Legislative Council: (see attachment #1) Introduced SB 2026

Jack McDonald, Professional Soil Classifiers of North Dakota: (18:31) (see attachment #2)

Lawrence Edland, Registered Soil Classifier: (20:15) (see attachment #3)

Senator Klein: (26:30) How many registered soil classifiers are there in the state?

Lawrence Edland: I believe there are 26 who are registered and 16 who are actively practicing. We have 2 that have become registered in the last two years; we have 3 that just took the fundamental exam in November. I don't know what the results of those individuals are; and we have two that passed the fundamental exam last spring and will be taking the practical exam this spring.

Senator Klein: Do you have a number of those folks working for you or are you a one man show?

Lawrence Edland: Yes, I am a one man show. Along with my wife who does all my editing, etc.

Senator Klein: So with 16 covering the state, you must be really busy.

Lawrence Edland: Last summer, I worked 41 days and was available 113 days; so no, not overly busy.

Senator Klein: So your profession isn't in extreme demand in the winter time?

Lawrence Edland: No, our seasons run from mid-April to mid-October and sometimes extending to November.

Senator Warner: How do you make a living? Is this and adjunct to another occupation?

Lawrence Edland: I am a retired NRCS soil scientist, so I have been doing this for the last eight years. So it's more or less to supplement my retirement income.

Senator Warner: Is that typical?

Lawrence Edland: I think so. There are a number of individuals that have their own practice and have been practicing for almost twenty years or more.

Chairman Miller: Would it work better for your organization to have a biannual fee rather than an annual fee?

Lawrence Edland: Are you referring to annual registration fee? We've never had an issue of someone asking for that. The annual fee is $180. An inactive fee is $20.

Vice Chairman Luick: The fees you collect, what are they used for?

Lawrence Edland: They are used for other organizations if they need help educating soil or conservation people. Whenever we perform an examination, we dig soil pits so the fees go into a contribution to give to the landowner for allowing us to do the practice on their site as well as whatever associated equipment costs.

Vice Chairman Luick: when you have these jobs, where or what type of soil classifying are you doing and who is it being done for? Is it specifically for the identification of hydric soils?

Lawrence Edland: I'd say probably 60% is hydric soil determinations at this time. Primarily with the NRCS, doing wetland certification. A lot of it is doing soil waste sights disposal areas for oil pit waste. We've done a number of sites for Sawyer, the industrial landfill up there.

Vice Chairman Luick: How about DOT? Do you get involved with them?

Lawrence Edland: That's probably in that 60%; 30-40% of that 60%.

C.J. Heidt, Registered Soil Classifier: (32:22) (see attachment #4)

Chairman Miller: (45:10) Something in the last part of your testimony made me question something in the first part of your testimony, the bill we are exempting the government basically from these requirements. I'm wondering why you're ok with that, especially with regards to the USDA.

C.J. Heidt: I heard that it would be hard to sell it if we didn't do that, because that was the original intent in the law. When the law was first put out there, the intent was to exempt state employees, so we kept that intact. We would prefer that no one would be exempt. In engineering, they aren't exempt. Agencies have to hire engineers if they are doing that kind of work.

Senator Klein: Do you have a lot of folks working outside of their scope of practice that you need to provide or take legal action against?

C.J. Heidt: I haven't seen formal complaints, but I do hear rumbling of people out there doing work.

Senator Klein: So over the years, this hasn't been an issue but this could open up a can of worms.

C.J. Heidt: If this was allowed, there probably would be no issue because anybody could do anything regarding hydric soils.

Senator Klein: We don't have any issues but you've heard of things happening outside the scope their practice.

C.J. Heidt: Yes, I think some of that has been going on. I think some of it has been that misinterpretation of the exemption as it's currently written because it is confusing.

Chairman Miller: You seem to reference that there is more than one way to determine hydric soils that is acceptable by the NRCS standards.

C.J. Heidt: There's three criteria that go into the identification of wetlands: one is hydrophilic vegetation, one is hydrology, and one is hydric soils. All three of those have to be present, so Hydric soils is one of the components that goes into the definition and delineation of a wetland.

Chairman Miller: So you come in and say these are hydric soils, and then someone else comes in and determines vegetation?

C.J. Heidt: Almost always we're working with a plant specialist at the same time and we're determining those boundaries in agreement. If there's vegetation out there, we rely on that and where the hydric boundary is. But on agricultural land there is no vegetation to go by, so hydric soils is the only defining criteria because a lot of time the hydrology has been altered by drainage and that kind of thing.

Chairman Miller: Soils can change, correct?

Chairman Miller: That's true, but the hydric soil part is something that generally is consistent and doesn't change rapidly over time. But that isn't always true, especially in the case of sandy soils where these indicators can come into play fairly quickly, and that's where the interpretation of the landscape comes into play in addition to the observable properties in the soil.

Vice Chairman Luick: For the people on the board who aren't familiar with what the purpose of the delineation of wetlands is, would you go through what is the process is and why?

Chairman Miller: The wetland identification is driven by federal law, so a lot of the delineation is related to DOT projects regarding to road construction projects and where those boundaries are and if they have to mitigate them or not. Another big one is agricultural wetlands, where farmers are hoping to put in tile drains and they need to have their wetlands identified so they are in compliance. Or if they have done drainage and there comes an issue with noncompliance, we'll go out and identify those wetland boundaries to see what the issues are. With development projects, the corps of engineers are interested if they are under their jurisdiction, so any development projects, they need wetland determinations also to see what wetlands are involved and if they have to mitigate them or if they are under a corps jurisdiction.

Lance Loken, Registered Professional Soil Classifier: (50:38) (see attachment #5)

Senator Larsen: (58:07) I would like to comment about the proper education. You left out continuing it or put that in. I've noticed through my profession that a lot of those continuing education credits are kind of a hoop jump. The other individual that stepped up said that they would be taking one of these classes and not even be in the field. Could you explain to me one of the proper education concepts of the hydric soils?

Lance Loken: Anita Thomas was making comments that would lead one to believe that it takes too long to become a classifier. We're waking out the CIT requirements here, but I don't think the engineers are taking out their engineering training requirements. This is a work that takes apprenticeship. I was taking a lot of soil classes in my graduate degree, and it involves going out in the field and digging holes, even in college. Getting out on the landscape is vital; some landscapes are easy to work on and some are not. Some of these salt water spills that we are involved with, you just can't look and determine where the salt water went. We have salts that are on prime farmland and you need to understand the difference between soils. I don't have a problem with things taking time and people apprenticing out.

Chairman Miller: Why is there no incorporation of fertility of soils?

Lance Loken: There's roughly 10 different divisions in soil science. This law was codified back in the time of the surface coal mine reclamation requirements. It dealt with being able to determine what is on the landscapes, so it can be properly reclaimed. They have requirements in the soil chemistry in the PSC laws that you have to meet during reclamation so some fertility is brought into it.

Chairman Miller: When we tax land, we are taxing it on what it can produce, which is not necessarily what you do?

Lance Loken: NRCS has published data that showed what types of soil would produce. Our firm did the irrigation study for Devils Lake and studied irrigation suitability.

Sandi Tabor, KLJ Solutions: (1:05:52) (see attachment #6)

Chairman Miller: (1:09:10) If the DOT was doing an in-house construction project, they wouldn't have to hire a person to delineate anything, they could just do it in house, right?

Sandi Tabor: I think yes, if they have a soil classifier they can do it, but they can provide you with more information.

Vice Chairman Luick: Have you had any opportunities to delineate wetlands for agriculture purposes or have you done that?

Sandi Tabor: Grady Wolf, who does the work for KLJ, could answer that question.

Grady Wolf, KLJ: We have; not very often. Typically from an agriculture side they are working through FSA or NRCS; I see it being split 50%-50% and it comes back down to the local level or the district you are working with. Some districts have allowed us to do the wetland delineations, some districts have asked that a professional classifier be present to do those delineations.

Chairman Miller: So when you are doing this work it'd probably be mitigating a wetland area for building something?

Grady Wolf: Partially building something or new developments. New developments often times go back to a developer or a client rather than a farmer but we have been asked by farmers to do the delineation for them. Both from a compliance and draining standpoint.

Vice Chairman Luick: So when you do this project, who ultimately holds the responsibility of doing it wrong or doing it right and who do you answer to?

Grady Wolf: We do delineations for the agencies, the agency is ultimately the one responsible for approving or not approving that delineation. The data that is collected in the field and the methods that we determined the wetland boundary is clearly stated in the report and on data sheets and that information gets handed off to the agency and jurisdiction for them to determine if they agree or have any questions with our work.

Vice Chairman Luick: The agency that you're talking about, would that be the NRCS or is it some other environmental agency? Who are you doing the work for?

Grady Wolf: The agencies we have worked for include the army corps of engineers who ultimately came up with the clean water act and regulation of wetlands. The NRCS and FSA have regulations under Swampbuster as well. We've also worked with the US Fish and Wildlife Service on wetland easements. We've also worked with the state boards in Minnesota. They also have state regulated boards in county levels that we've also completed wetland delineations for.

Vice Chairman Luick: How many times have you gotten in trouble for doing any of this delineation work improperly?

Grady Wolf: I do not have any wetland delineations that have not been approved by the regulatory board. There has been one instance where the NRCS did question a delineation. On that delineation, we had a professional soil scientist on staff that was registered in the state. The NRCS went back out and delineated their own boundaries because they did not agree with our soil scientist. Other than that, I can testify that I have done delineations on thousands of acres of wetlands within the state and they have all been approved by the Army Corps of Engineers or whichever regulatory agency there is by a determination of jurisdiction.

Robert Fode, DOT Director of Project Development: (1:15:10) (see attachment #7)

I will answer your question, Mr. Chairman, about whether we are exempt as a state agency. Yes, we are exempt as a state agency. If it is an internal project to us at the DOT, we are not required to have soil classifiers. However if we take it out and go to a firm like KLJ, KLJ would be required to have a soil classifier to do their wetland delineations.

Vice Chairman Luick: (1:16:24) I had had a meeting with the DOT every summer, and some of the questions that come up are if there is an obstruction in a highway ditch, doesn't the DOT have the authority to say yes or no whether that is a wetland? Why is it that the DOT is succumbing to needing to mitigate those particular areas for some other area because it is deemed a wetland?

Robert Fode: We at the DOT have been trying to fight that nationally and put some federal regulations in nationally. What has happened, and the Corps things through executive order that they actually have jurisdiction over our created wetlands in ditches, even if waters flows there periodically and the situation If they take jurisdiction a lot of time we'll say you don't have jurisdiction, but there are times where it's gray and we don't know who has jurisdiction. We are trying to work at the national level to write legislation.

Vice Chairman Luick: In your experience, have you ever had problems with a contracted individual, other than your agency, identifying wetlands in the past?

Robert Fode: I believe the DOT has had problems in the past with wetland delineations. When we identify that we do have a problem, we go out and fix what we have to fix to take care of that particular issue.

Dean Moos, Assistant Director, Reclamation Division Public Service Commission: (1:20:10) (see attachment #8)

Chairman Miller closed the hearing on SB 2026.

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2026
2/6/2015
Job # 23386

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Emmery Brottrey

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers

Minutes: *Attachments: #1*

Chairman Miller handed out amendments for SB 2026 (see attachment #1) and asked Sandy Tabor what she thought of the amendments.

Sandy Tabor, KLJ: I think we are getting closer. If we can have some time to look at them and edit them, we can get any issues resolved.

CJ Heidt, Professional Soil Classifier: We'd prefer there to be no exemptions but we realize we may need to make some concessions. I think it's not in the welfare of the public to do that and we exempted DOT projects which would still protect agriculture lands because that's vitally important and I think any producer in the eastern 2/3rds of the state realizes an issue of wetlands. As an example, the NRCS is initiating off-site procedures and we have reviewed and worked on these off-site procedures for determining wetland delineations. Easily 30-50% of what they identify as wetlands by their procedures when they go back to the field are not wetlands largely because of the hydric soil determination. That's a big deal. Maybe the DOT projects are something, the agriculture land is vitally important. The NRCS and the corps don't care if the wetlands are more and bigger, that's the reality of it. The only recourse you have is professionals out there doing the work and that we would like to protect. If we start making more exemptions even this exemption, you are going to take away 30-50% of the work that classifiers do. That's not going to do anything to get more classifiers out there into this profession because there's going to be that much less work.

Senator Klein: Are we not just trying to make what is currently being done legal? Does this carve those folks out that have been doing this in the past?

CJ Heidt: If they haven't been doing hydric soil determinations in the past, they were operating outside the law. It doesn't matter what the corps says, people doing the work still have to operate within the law.

Senator Klein: It seems to me that you said you were potentially going to lose all this work; yes, you're going to pick up work if we don't let them do it anymore. But if they are currently doing it and it was in the law, I don't know if we want to make any restrictions on what we have been doing in the past, we just want to clarify the law.

CJ Heidt: For example, right now the DOT requires professional soil classifiers to do hydric soil determination. If this exemption goes through, they won't require professional soil classifiers. It will be open up to anyone who wants to do it and that is going to take away a lot of work from classifiers because we're doing it right now.

Senator Klein: I don't think that's what those folks want to do.

CJ Heidt: Right now the state law says that it has to be professional soil classifiers doing hydric soil determination. The Corps says anyone can do it. But that doesn't mean that those people doing it are operating within the law, the corps can say anything they want but that doesn't mean those people don't have to follow the law.

Chairman Miller invited Sandy Tabor up to give some clarification.

Sandy Tabor, KLJ: When it's purely a federal issue or a federal permit and a state entity isn't involved, we can do the soil classification--we're not violating the law. If the state has to have a federal permit then they have to have the soil classifiers work on it. That's our concern: what's the difference? There are different regulations in other states that if you go through a certified program, you can do it in the other states. I know that other states have different soils and that's part of the uniqueness of ND. When we proposed an amendment to the existing bill, we were trying to narrow this to working for regulatory agencies on permits. If it's a DOT project and the corps needs a permit, we should be able to do it. The question concerns the jurisdiction. Is it a federal permit for a federal project or is it a state project requiring a federal permit? If it's the latter, we can't do it right now under the law.

Chairman Miller: Even with federal law supremacy, you're still operating in ND; you still have to follow state rules as well.

Sandy Tabor, KLJ: The feds allow us to do it.

The committee decided to wait to make a motion on the bill.

Chairman Miller closed the hearing on SB 2026.

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2026
2/12/2015
Job #23766

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Emmery Brotherg

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers
(Committee Work)

Minutes: *Attachments: N/A*

Chairman Miller Asked the committee what their opinion was of the bill and the amendments. He said that he had a plan to take the amendments proposed by the soil classifiers and Sandy Tabor (KLJ) and put them together. Senator Luick was going to go with Chairman Miller to talk with them and find a compromise.

Senator Larsen asked if the since KLJ group was exempt from the DOT, if it was their thought that they are going to expand to do different projects.

Chairman Miller said the issue is that some federal project says that KLJ or an engineering firm can delineate the wetlands, but state law is trying to do otherwise.

Senator Warner stated that his recollection was that if the project is strictly the corps of engineers project, that KLJ can do the work but if the corps of engineers has to lease land or get a license for a portion of the work, that they can't.

The committee decided to revisit the discussion at a later date.

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2026
2/19/2015
Job #24123

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Emmery Brotherg

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers
(Committee Work)

Minutes: *Attachments: #1-2*

Chairman Miller passed out some amendments (see attachment #1) and a marked up version of 2026 (see attachment #2).

What we did was take a set of amendments from the soil classifiers and some from KLJ engineering and Ms. Tabor, so I put them together and then we added some things to that. Let's go through the marked up version of the bill (see attachment #2).

Page 1: No changes.

Page 2: There's a removal of "identification of hydric soils;" that was an addition in the interim committee to code. That was not in the original code.
We included the "preparation of soil survey maps and reports" from the original code. We removed the phrase "practice of environmental engineering" because nobody really knew what that was.

Page 5: Again, we removed the word "hydric soils" because identification of soils is what's being done, so that includes hydric soils. I don't think we need to specifically add that in because there's no definition of what hydric soil is in this area.
"Septic system" was an issue with the department of health.

We made a change on these waiting periods on when they can take these fundamental tests. We had three years, we had another year ad six months; we took all that out and left that decision up to the discretion of the board.

Page 6: "next… time agreed" upon rather than having this 6 month waiting period.
"If an individual does not receive a passing grade after three attempts, the individual is barred from retaking the examination for a period of three years," I don't think that's

necessary, that's up to the individual and the board on how they are going to take and manage these tests.
Change from "November" to "December," that was just to comply with some of their mailings so they don't have to send out more postage.

Page 8 is where we added the the Tabor amendment where it talks about the for profit and the "individual is deemed is qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed." Basically what we're saying there is if the DOT wants an engineering company to handle that and they're ok with them doing that, then that's acceptable. That's already being practiced.
We removed the reference to the federal training course because that doesn't do anything anyway.

There's another chamber that can deal with our changes if they don't like it; Vice Chairman Luick and I worked with Anita Thomas and I think we made a good bill. It does what everyone wants it to do and I would leave it up to the committee's recommendation.

Senator Warner: I am fully in support of the changes.

Vice Chairman Luick moved amendment 15.0010.05001 to SB 2026.

Senator Warner seconded the motion.

A Roll Call vote was taken. Yea: 6; Nay: 0; Absent: 0.

Senator Larsen moved Do Pass As Amended.

Vice Chairman Luick seconded the motion.

A Roll Call vote was taken. Yea: 6; Nay: 0; Absent: 0.

Do Pass carries.

Vice Chairman Luick will carry the bill.

15.0010.05001
Title.06000

Prepared by the Legislative Council staff for
Senator Miller
February 13, 2015

TV
2/19/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2026

Page 2, line 5, replace "identification of hydric soils" with "preparation of soil survey maps and reports"

Page 2, line 10, remove ", including the practice"

Page 2, line 11, remove "of environmental engineering"

Page 5, line 5, remove ", including hydric soils"

Page 5, line 9, remove "Septic system sitings;"

Page 5, line 10, remove "f."

Page 5, line 11, replace "g." with "f."

Page 5, line 13, replaced the underscored comma with an underscored period

Page 5, remove lines 14 through 18

Page 6, line 6, remove ", provided there is a waiting period of at least six"

Page 6, line 7, replace "months from the date of the previous attempt" with "at the next regularly scheduled time or at a time agreed to under subsection 3"

Page 6, remove lines 9 and 10

Page 6, line 20, replace "November" with "December"

Page 7, line 28, replace "private" with "for profit"

Page 8, line 1, after "(3)" insert "The individual is deemed qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed;

(4)"

Page 8, line 3, replace "(4)" with "(5)"

Page 8, line 4, after "must" insert "consist of at least forty hours and"

Page 8, remove lines 9 and 10

Page 8, line 11, replace "b." with "a."

Page 8, line 13, replace "c." with "b."

Renumber accordingly

Date: 2/19/2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2026

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: 15.0010.05001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Warner

Senators	Yes	No	Senators	Yes	No
Chairman Joe Miller	Y		Sen. Erin Oban	Y	
Vice Chairman Larry Luick	Y		Sen. John M. Warner	Y	
Sen. Jerry Klein	Y				
Sen. Oley Larsen	Y				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Adopt amendments proposed by Senator Miller; 15.0010.05001

Date: 2/19/2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2026

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Larsen Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Joe Miller	Y		Sen. Erin Oban	Y	
Vice Chairman Larry Luick	Y		Sen. John M. Warner	Y	
Sen. Jerry Klein	Y				
Sen. Oley Larsen	Y				

Total Yes 6 No 0

Absent 0

Floor Assignment Senator Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2026: Agriculture Committee (Sen. Miller, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2026 was placed on the Sixth order on the calendar.

Page 2, line 5, replace "identification of hydric soils" with "preparation of soil survey maps and reports"

Page 2, line 10, remove ", including the practice"

Page 2, line 11, remove "of environmental engineering"

Page 5, line 5, remove ", including hydric soils"

Page 5, line 9, remove "Septic system sitings;"

Page 5, line 10, remove "f."

Page 5, line 11, replace "g." with "f."

Page 5, line 13, replaced the underscored comma with an underscored period

Page 5, remove lines 14 through 18

Page 6, line 6, remove ", provided there is a waiting period of at least six"

Page 6, line 7, replace "months from the date of the previous attempt" with "at the next regularly scheduled time or at a time agreed to under subsection 3"

Page 6, remove lines 9 and 10

Page 6, line 20, replace "November" with "December"

Page 7, line 28, replace "private" with "for profit"

Page 8, line 1, after "(3)" insert "The individual is deemed qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed;

(4)"

Page 8, line 3, replace "(4)" with "(5)"

Page 8, line 4, after "must" insert "consist of at least forty hours and"

Page 8, remove lines 9 and 10

Page 8, line 11, replace "b." with "a."

Page 8, line 13, replace "c." with "b."

Renumber accordingly

2015 HOUSE AGRICULTURE

SB 2026

2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2026
3/12/2015
Job #24740

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jo Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers; and to provide for a report to the legislative management

Minutes: Attachments #1-6

Anita Thomas, Attorney for Legislative Management: (Attachment #1)

(18:12)
Representative Alan Fehr: When there is a licensure you start with a definition of the profession and scope of practice. I am looking for that. Page 1, line 16 & 17 is the closest I can see to what is a definition. Is that the definition of soil classifier?

Anita Thomas: No. The first and second sections are cross references to the surface mining and reclamation. The definition section is right below at the beginning of the bottom of page 1.

Representative Alan Fehr: There is a definition of soil classification not of soil classifiers.

Anita Thomas: That is correct. When defined by the interim committee they felt defining soil classification would give definition to someone engaging in it as a classifier.

Representative Alan Fehr: Page 2, line 4 as it lists these five items there is an "and." Does a soil classifier have to do all of those or just two of them?

Anita Thomas: My understanding of soil classification is that all five of these go into the act.

Representative Alan Fehr: If someone only does one or two, are they infringing on the scope of practice of soil classification

Anita Thomas: It is my understanding from the interim study that all five are part of soil classification.

Representative Cynthia Schreiber Beck: Do other states have a similar requirement for soil classifiers.

Anita Thomas: We were told there are states with everything to nothing similar to this to something with more moderate requirements than what we have in North Dakota.

Representative Craig Headland: We have added educational requirements to the statute from what we had in the past. Correct? You have to pass an exam. If you can pass without the educational requirements, why would you add all the educational standards?

Anita Thomas: There has always been an educational component. After working with the soil classifiers, we clarified what that component is.

Vice Chair Wayne Trottier: What did we do about those that come from out of state?

Anita Thomas: They have to meet our qualifications.

Representative Joshua Boschee: The clarification of educational requirements and the registration process--is this an attempt to improve access and increase the number of soil classifiers in the state?

Anita Thomas: The intent was not to address that. The intent was to articulate what is in law. I would assume part of your discussions as a committee would be whether or not that is appropriate.

(25:45)
Representative Marvin Nelson: (Attachment #2a)

(28:00)
I question whether we need a state board because we have so few individuals. It looks like we will have fewer once a large percentage of individuals will be on the state board. It might be better just accepting the national accreditation.

I did search their database on the ARCPACS and found only three certified professional soil classifiers listing North Dakota as their address. It is possible some of the people practicing in the state may be listed under other states. It is also possible some of the people practicing may be listed under the more general soil scientist rather than soil classifiers.

In wetlands determinations there are three things: identification, determination, and delineation.

1. Identification is the whole process of identifying a wetland
2. Determination is a simple "yes" or "no"
3. Delineation is where is it on the landscape. How big is the wetland?

Refers to page 4 of Attachment #2b. (30:00) The flow chart shows the steps. There are only a few places where determining a wetland for the NRCS that the question of dealing with hydric soil even comes up. Most wetland determinations don't even require a site visit.

In North Dakota we have problem hydric soils which can give false negatives. For example in a discharge area where you get a lot of calcium build up. That build up can create difficulties for the redox bodies in the soil to form. If you dug down in hydric soil you will see red spots in the soil. Those are redox bodies with a lot of calcium that can inhibit the formation. There are a lot of difficulties. But it doesn't take four years of working with someone to be able to do a reasonable job of determining hydric soils.

When you are doing the determinations you have to know which agency you are doing them for. You are not determining if it is a wetland or not. You are determining if it is a jurisdictional wetland. You can have a hydric soil and not have a jurisdictional wetland. You can have a jurisdictional wetland that doesn't have a hydric soil. Some are wetlands for Fish and Wildlife Service purposes that are not wetlands for Farm Service Agency purposes. That is why it is important to be certified for that agency for doing the determinations for their agency.

Representative Diane Larson: You have a problem with identification of plant growth material portions of what is required for a soil classifier. I don't see that they are the only ones that determine plant life material. If you are a soil classifier that is one of the things you need to be able to do.

Representative Nelson: I am not sure soil classifiers in the nation would agree with that. I don't believe identification of plant materials is part of the national accreditation.

Representative Diane Larson: This bill has to do with North Dakota standards with our specific soil. You are saying we should just go with the national standard that isn't specific to North Dakota?

Representative Nelson: I can't think of definitions of soil types that have the plant materials. I don't remember soil type definition that talks about plant materials.

Representative Diane Larson: Do you want us to do away with our state standards for our specific soils and just go with the national standard?

Representative Nelson: I believe that would make sense. It is not a question of the definition as the question of whether it is worth having a separate individual state board. I know there have been problems for people coming from out of state to get certified. Either they are not up to our standards or the practical exam is conducted in such a way that you have to memorize what you wouldn't use in the field. The name of a soil varies from state to state. It has to do with climate.

Representative Diane Larson: From the interim study, one of the issues is that North Dakota farm land has its own specific qualities. When it is dug up it should be returned to the same quality. North Dakota soil is good to grow some crops that are different from other states.

Representative Nelson: With mine reclamation there is a detailed soil survey that is done first. When the soils are put back, they are not put back in the same detail as before. The

detailed survey shows the productivity. When done with reclamation it should be the same. The exact same soil doesn't have to be put back.

What is making the difference in the soils is its position on the landscape. Reclamation on oil wells doesn't always get the same soil back.

Representative Alan Fehr: If you don't have a large enough profession, board size is a problem. You said national certification also has problems. There are two other possibilities:
1. Instead of having an independent board, it becomes registered or licensed under another board. Is it a possibility of going under another board?
2. Or registered under the Ag. Commissioner's office?

Representative Nelson: Nationally it is the Soil Society of America. Their board doesn't have a majority of soil classifiers. It could be a certification under the Dept. of Ag. That would require them to maintain the expertise to do that. It would be similar to what we see under NRCS with everything from conservation plans to fertility management. They have designed training and certification for each practice. If you are eligible for one doesn't make you are eligible for the other. We could set up a similar system but it would be difficult to do. Some things a soil classifier does such as reclamation mapping is a specialty. I don't know that our agencies would have the expertise on staff.

Chairman Dennis Johnson: Are you a soil classifier?

Representative Nelson: I am not certified to determine wetlands. I do, as an agricultural consultant, deal with people who are certified soil classifiers. Most are coming from outside of the state. North Dakota has tighter controls. In Minnesota you can do a certain amount of engineering work without being an engineer. That would have an effect with the Farm Service Agency because I can't go out on a farm as a technical service provider to design and grass a waterway because North Dakota has a zero exemption for dollars on engineer work. I would have to be an engineer before I could do it. I could do it as an electrical engineer. Minnesota is more open.

Sandi Tabor, Kadrmas, Lee, & Jackson: We are in support of the bill but are really focused on the exception for wetland delineation. The issue for us is that you have soil classification and then you have wetland delineation. Wetland delineation is a multidiscipline process. Because of the confusion in the existing law some of our state agencies determine they would have to hire a soil classifier to do wetland delineation which adds to the cost of projects. Wetland delineation is not just about soil classification and is a federal program. Grady Wolf from our environmental group is here to talk about what he has done.

Grady Wolf, Production Manager for the Environmental Practice Area, KLJ:
(Attachment #3)

(53:35)
Representative Diane Larson: The red flag for me is Corp of Engineers and EPA. If you use their manuals, you know they change their manuals. As federal agencies change, wouldn't it be good to keep our North Dakota priorities?

Grady Wolf: Regarding wetlands, the state does not have standards for delineation. The state falls back to whatever agency is asking for that determination. In most cases it falls back on the 87 manual. The only agency that doesn't follow the process described in the Army Corp of Engineer manual is the U. Fish and Wildlife Service. Their determination of a wetland on their easement acres is not defined the same as in the 87 manual. Every other agency (state, federal, and local) have all gone to the 87 manual and back to the 2010 regional supplement.

Representative Craig Headland: In changing climate like a drier period, how long does evidence of the vegetation stay in the soil?

Grady Wolf: The three parameter approach that identifies vegetation, hydrology, and soils must be present to determine a wetland. That is defined in the 87 manual. I've seen vegetation and hydrology and soils change over one or two years' time.

Representative Craig Headland: If land is determined to be a wetland, it doesn't mean it is for 50 years. Is there a legal way to reclassify it?

Grady Wolf: The Army Corp of Engineers looks at a wetland delineation to be good for five years.

Matt Linneman, Environmental & Transportation Services, ND Dept. of Transportation: (Attachment #4)

(1:01)
Dan Wogsland, Executive Director, ND Grain Growers Association: In support. We want to make sure the exemptions on page 7 & 8 didn't broaden it too far. We don't want people out there classifying and delineating wetlands that shouldn't be.

Opposition:

Jack McDonald: Professional Soil Classifiers of ND: The position of the soil classifiers is that they cannot support this bill. It is because of the exemption section. The soil classifiers are willing to work with others to reach a compromise. The soil classifiers will never agree to legislation that will drive them out of existence and that is what is happening with this bill.

Lawrence Edland, Registered Soil Classifier, Edland's Soil Consulting:
Testimony (Attachment #5b)
Amendments that are recommended. (Attachment #5a)

(1:13)
Addressed the concerns of the SSSA (Soil Science Society of America) (Attachment #5c)

(1:19:45)
Representative Craig Headland: Back to the determination that would have been mishandled had you not been there--why would a biologist be making a wetlands determination?

Lawrence Edland: The biologist is there to make the vegetation determination. Because the vegetation was dominated by hydrophytic vegetation he felt it should be a wetland. Hydric soils are so landscape related that if you know you are on an upland swale and water is not going to stand there to become hydric, it is not going to be a wetland.

Representative Craig Headland: So you had cattails growing out the side of a hill and he wanted to determine that as a wetland?

Lawrence Edland: The vegetation was foxtail barley which is a strong indicator of salinity.

Representative Craig Headland: I've seen cattails growing out the side of the hill from water running out. Would that be classified as a hydric soil?

Lawrence Edland: It depends. If it has been artificially changed then it probably would not be jurisdictional.

Representative Craig Headland: Your comment that you believe we have agricultural property classified as a wetland when it shouldn't be sparks my interest in this bill. If one acre of soil is classified as a wetland when it shouldn't be, then that is a problem.

Lawrence Edland: There are biologists in this room that would confer that there is a lot of wetland vegetation that grows on poorly drained soil which are outside the boundary of a hydric soil.

Representative Craig Headland: When we go through a wet cycle, it is difficult enough to manage excess water but we don't get much help from any government entity.

Lawrence Edland: One other problem with wetland delineations is that much of the vegetation is gone. The only thing you have to refer to is the soil. It takes sometimes thousands of years for references to wetness to disappear. It takes just a short time for it to be created.

Representative Cynthia Schreiber Beck: Prior testimony from Mr. Wolf at KLJ said he used the EPA's 1972 Clean Water Act Section 404 for wetlands. What is your opinion on that?

Lawrence Edland: I am not up on the Corp of Engineers manual. There are sections that allow for wetland identification that don't require soil investigations. I don't agree with that. There are three parameters to wetlands. When I do wetland determinations, I do only the soil part. I don't do the hydric vegetation or the hydrology. I don't make the determination of whether it is a wetland.

Representative Cynthia Schreiber Beck: Does that meet the FAA requirements?

Lawrence Edland: I require that there be a biologist or a botanist and hydrologist. If one of the three indicators is not present, then it is not a wetland. If it is determined to be a wetland, it is up to the agency to determine whether it is jurisdictional or not.

Representative Cynthia Schreiber Beck: Do you agree with Representative Nelson's testimony that the identification of plant growth material should be removed from where he suggested in the bill?

Lawrence Edland: Reads from page 1, lines 14-18. Can I identify whether a soil is suitable for plant growth material? Yes I can.

Representative Cynthia Schreiber Beck: Representative Nelson was on page 2, line 4, item d.

Lawrence Edland: That is what it is referring to. We are identifying suitable plant growth material for reclamation purposes.

Vice Chair Wayne Trottier: Has anyone ever had their license suspended or revoked?

Lawrence Edland: Not that I am aware of.

Vice Chair Wayne Trottier: Would a PhD in soils at NDSU pass the test?

Lawrence Edland: I guess it depends on how long they have been in the state.
The practical test we give is varied across the state because we feel you shouldn't be able to identify soils in just one area and should have knowledge of all the soils.

Representative Alan Fehr: You are a member of the Professional Soil Classifiers Association of North Dakota. Are you familiar with the board?

Lawrence Edland: I am on the board and on a committee assigned by the association to lobby for the classifiers.

Representative Alan Fehr: The board has existed since 1973?

Lawrence Edland: Yes. I have only been on the board for three years. When wetland issues came about, the demand was recognized.

Representative Alan Fehr: The chapter being deleted? I don't know what was deleted versus what was added. Under the definitions starting on the bottom of page 1, it lists the definition of soil classification. Is it the same as what is in current law or different?

Lawrence Edland: There are significant changes. It clarifies what we do, who we are, and how to become registered. It does identify what it requires to become registered.

Representative Alan Fehr: I am staying with that section, the definition of soil classification. Page 2, line 4d is followed by an "and." Is it your understanding that

someone is practicing soil classification only if they are doing all five? If they are in the field and only doing one, they are not infringing on soil classification?

Lawrence Edland: No you could be doing one or all. If you are doing a soil survey you are infringing on the soil classifier law. Hydric soils and septic tanks were removed by the Senate as to what classifiers do. Those are important parts and are not listed as being experience that can be used to become registered.

Representative Alan Fehr: You are saying individuals couldn't do any of these five outside of the exemptions listed later. They can't do any of these five if they are not soil classifiers unless they are in the exemptions. Correct?

Lawrence Edland: Correct.

(1:35:20)
Rocky Bateman, Member of the Board of Registration for Professional Soil Classifiers: (Attachment #6)

Representative Cynthia Schreiber Beck: Do you have a copy of the original document that was changed?

Rocky Bateman: Just what we had from Anita when we left. It was after that the exemptions were added.

Representative Alan Fehr: You exempt people if they are qualified to do this part. Is that similar to what we are looking at with these exemptions? They already have a certification or a qualification that allows them to do what is needed. Or are the ones exempt unregulated?

Rocky Bateman: In other states the standards are lower. We have a higher standard. Companies are coming in because of our economic growth and they find out they are not qualified according to our law. Is the higher standard necessary? We feel it is necessary. The work done in the past speaks for itself when we look at coal mine reclamation and it is time we apply them to the oil field and wetlands determination.

Representative Alan Fehr: You mentioned other states. Earlier it sounded like they have to start over. Is there a way to streamline reciprocity to make it easier for people from other states to come in and still maintain the integrity of the law?

Rocky Bateman: I don't think we can maintain the standards if we make it easier.

Chairman Dennis Johnson: Closed the hearing. Will continue March 13 at 9:00 a.m.

2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2026--Continued
3/13/2015
Job #24792

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jo Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers; and to provide for a report to the legislative management (Hearing continued)

Minutes: Attachment #1

Opposition continued:

Lance Loken, Registered Professional Soil Classifier: (Attachment #1)

Representative Diane Larson: We talked about those agencies yesterday that you listed. They refer to the Corp of Engineer manual. They change their manual over time. Is that going to change how they interpret the soils? Will it be different from how a soil classifier would interpret?

Lance Loken: I have my Master's Degree in wetland soils. I practiced for 5 to 8 years under supervision of other soil classifiers. I struggled many times with what I was seeing. Things aren't as easy as they lead you to believe.

Gave example of Bismarck Airport.

Representative Diane Larson: I am not talking about the science of the ground. In my decision on this bill, I am trying to figure out how much of this is soil classifiers trying to protect their industry vs. how much of this is interfering with getting work done or how much do we need to have to continue watching the soil. Where is that balance?

Lance Loken: It has been said there are not enough of us and people have to wait. That is not true. People are making sure the regulators cannot challenge them.

We have done wetland delineation at airports. The FAA wants wetlands gone within 500 feet of the airport. But they have to be mitigated. It was about 20 acres. That helps eliminate the bird strikes.

Representative Cynthia Schreiber Beck: What would it take to determine wetlands? Do you also go out with two others?

Lance Loken: I can't do the vegetation. We would have two people, a botanist and a soil classifier. On high end legal situations, we will bring a hydrologist along.

Representative Cynthia Schreiber Beck: Is there a cost difference between a soil classifier and two other people? So often the engineering firms have their own people.

Lance Loken: We sub to firms where they have the biologist but they don't have the soils people. On federal contracts it is based on salary, times the direct and indirect overhead, and the profit. The rates on government projects are very restricted and often half of what we charge in the private sector. We try to bid a project at the lowest price that allows us to make money.

Representative Cynthia Schreiber Beck: The bill talks about the term soil classification doesn' t include "water well contracting, water well pumping, etc." Do you feel no one else should be able to determine that unless it is a soil classifier?

Lance Loken: I don't know why that was put in the bill.

Chairman Dennis Johnson: Do you determine the west end outlet of Devils Lake. It is running and leaking. Do you go back in and reclassify those lands that are standing in water as wetlands?

Lance Loken: I remember many years ago we predicted it. The water commission hired us to do a baseline soils survey along the outlet. Now that it is leaking that is valuable information to determine the impacts.

Chairman Dennis Johnson: Closed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2026
3/20/2015
Job #25195

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Le Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to soil classifiers; and to provide for a report to the legislative management (Committee Work)

Minutes:

Representative Diane Larson: Moved Do Not Pass.

Representative Cynthia Schreiber Beck: Seconded the motion.

Representative Diane Larson: The soil classifiers were not happy with the bill in its present form. They felt more comfortable just having the bill killed.

The people that wanted the amendments would rather have the bill defeated. I know there are some rewrite things that would have been nice to keep. I struggled with coming down on one side or the other. Both had equally good arguments.

A Roll Call vote was taken: Yes 11, No 0, Absent 2.

Do Not Pass carries.

Representative Larson will carry the bill.

Date: 3/20/2015

Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2026

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Larson Seconded By Rep. Schreiber Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier	X		Rep. Jessica Haak	X	
Rep. Bert Anderson	X		Rep. Alisa Mitskog	AB	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Tom Kading	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. Alex Looysen	X				
Rep. Cynthia Schreiber Beck	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2026, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2026 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2026

SENATE BILL NO. 2026 - Soil Classifiers
Presentation by
L. Anita Thomas, J.D., LL.M.
Senior Counsel
North Dakota Legislative Council

During the last session, the soil classifiers came to the Legislative Assembly with a request to alter the application process for becoming a soil classifier. The process had required an individual to be a soil classifier in training and to present an application containing five references, three of whom must be professional soil classifiers having personal knowledge of the applicant's soil classifying experience. This was changed so that only three references were required and only one of the three had to be a professional soil classifier having personal knowledge of the applicant's experience.

That change was made in 2013 House Bill 1154. As that bill was being worked on, some of your colleagues realized that there were a few additional issues:

1. The definition of a soil classifier wasn't readily obvious;
2. What fell under the definition of soil classification wasn't readily obvious and that was a problem because it's a class B misdemeanor to cross that line -- to perform soil classification without being a registered soil classifier.
3. It seemed to take an inordinately long time to become a soil classifier -- i.e. a time period comparable to that required to become a physician; and
4. Soil classification seemed to be a dying art, if you looked at the number of those still practicing.

Finally, it was 1973 when the newly formed soil classifiers association pursued legislation to recognize soil classification as a profession and to establish thresholds for entry into that profession. In the ensuing 40 years, there have been relatively few changes to the original legislation.
That combination of factors, led your colleagues in the 2013 legislative assembly to include in the bill a directive for a study and a rewrite of the chapter.
Let's begin with what is a soil classifier.

A professional soil classifier is currently defined as an individual who is engaged in the practice of soil classifying and the practice of professional soil classifying. Section 43-36-01 defines those two terms as meaning:

> [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.

An individual is construed to practice or offer to practice soil classifying "within the meaning and intent of this chapter" if the individual "by verbal claim, sign, advertisement, letterhead, card, or use of some other title represents that the person is a soil classifier. . . . " The statute goes on to provide that this

does not extend to individuals who are specifically exempted by the chapter nor to individuals who "sample and test soil for fertility status or construction materials and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. " An individual may not be construed to practice soil classifying unless the individual "offers soil classifying services to or performs such soil classifying for the public." [See, NDCC Section 43-36-01(3)]

That verbiage didn't really shed a lot of light on the quest to define this profession.
Here's the definition that the interim committee came up with . . . You will find this at the bottom of page 1.

"Soil classification" means the determination of a soil's suitability for a particular purpose through:

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

It does not include:

1. The sampling and testing of soil for fertility status;
2. The sampling and testing of soil for the presence of construction materials;
3. The practice of architecture;
4. The practice of engineering;
5. The practice of landscape architecture; or
6. Water well contracting, and the various activities associated with that.

Continuing on page two, the bill maintains a board of soil classifiers consisting of five individuals appointed by the governor. Three of the board members must be soil classifiers registered under the chapter. Like current law, the term of office remains at five years. Unlike current law, the proposed bill adds a limit of three consecutive terms. In this case, that is still 15 years in one's professional career.

At the bottom of page 2, the compensation cap was increased from $62.50 to $135 per diem.

In the middle of page 3, you will see the list of board powers. This is standard language for boards and commissions and not a significant departure from what the board can currently do.

I'll come back to the board's duties.
At the top of page 4, we cleaned up and modernized the board's record keeping requirements and carried forth the standard state audit requirements which are set forth in section 54-10-27. This section requires boards and commissions to provide for an audit every two years. If, however, an occupational or professional board has less than $50,000 in annual receipts, that board may simply submit an annual report to the state auditor.

Toward the bottom of Page 4, we start getting into how one actually becomes a soil classifier.
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.

One option for becoming a soil classifier would involve an individual being a graduate of a "soils curriculum approved by the board as satisfactory." Current law does not, however, indicate what that might be.
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.

So, if you took a four year soils curriculum approved by the board, you could get a soil classifier in training certificate, and with four years of approved experience, take the soil classifiers exam.

In order to get the necessary soil classifier in-training certificate, one must be a graduate of a soils curriculum approved by the board and pass an examination in the fundamentals of soil classification. 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." That's for the classifier in training.

If an individual wants to be a soil classifier but 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."

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.

So, you can see why the interim committee was a bit perplexed.

The first thing that the interim committee did was to eliminate the soil classifier in training level.

Returning to page 4 of the bill you will see the steps for registration beginning on line 19.

1. Get and file an application.
2. Provide the names of three references, one of whom must be an individual registered with the board and must have personal knowledge of the applicant's activities.
3. Submit a transcript indicating that:
    a. One has a baccalaureate or graduate degree, in a science - related field, from an accredited institution of higher education; and
    b. That at least fifteen of the credits constituting the applicant's degree come from the list of qualifying soil - related courses, as set forth in section 43 - 36.1 - 08 or have been otherwise approved by the board.

A little bit ago, I had asked you to skip over one section of the board's duties. This is where it ties in. The proposed language directs the board to develop and make available on its website a list of each course, by name and number, that is:

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

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

Again, current law refers to a "curriculum approved by the board." The interim committee thought it would be appropriate to have the board actually publish what those courses or that curriculum might be, so that an individual contemplating entry into the profession would have due notice of the requirements.

Getting back to the application process, an applicant must submit evidence of having passed the fundamentals of soil science examination.

The applicant must submit documentation of experience in or exposure to:

a. The identification of soils, including hydric soils;
b. Soil surveys;
c. Preparation of reports pertaining to soil identification or soil surveys;
d. Identification of plant growth materials;
e. Septic system sitings;
f. Land reclamation; or
g. Other similar activities deemed by the board to be related to the classification of soil.

Current law talks about having four years of experience or in some cases eight years of experience in soil classifying work of a character and grade which indicates to the board that the applicant is competent to practice soil classifying.

What current law does not do is define "*years*." This is North Dakota. Soil classification does not take place year round.

When the current law refers to a "year" of experience, does it mean six solid months in the field? Four solid months? Is one week-long job in the summer sufficient experience?

Because of these unanswerable questions, the interim committee took a different tack. It determined that one needed to have both an academic preparation and experience. The committee was told by the soil classifiers that if one did not have sufficient experience, one would not be likely to pass the practical examination.

The interim committee thought at one point that if one passes the examination, whether one did so based on experiences gained in one season or over 4 to 8 years, is rather irrelevant. However, in the end, the soil classifiers recommended that there be a three year waiting period between the date on which the applicant took the first exam - the fundamentals of soil science, and the date on which the applicant takes the practical examination. This is on page 5, beginning on line 13. You will see that there is the opportunity for the board to waive the three year waiting period. This was put in in case an individual came with lots of first hand experience, and there was no need for that individual to gain three more years of experience in the interim between the examinations.

Page 5 of the bill also provides for an application fee that is set by the board but capped at $500. Current law sets the fee at between $50 and $200, but adds that if a national test is administered, the amount may not exceed five hundred dollars.

Once one is registered there is an annual registration fee set by the board but capped at of $300. That is the current level.

At the bottom of page 5, the bill draft adds such practical features as telling the board to publish on its website the date, time, and location of the fundamentals exam and the date and time of the practical exam. Because the practical exam is given in the field, the location is not included.
The board is directed to offer the practical exam at least once per year.

If, for whatever reason, an individual chose not to wait for the next exam cycle, the individual could ask for an off-calendar administration and if the board agreed, the board could charge an extra fee for this accommodation.

At the top of page 6 - If an individual fails to receive a grade of 70 on the practical exam, the individual incurs a 6 month waiting period before being allowed another attempt.
If the individual fails three times, there is a 3 year waiting period.

In the middle of page 6, you will see that certificates of registration expire on December 31st of each year.
The board is directed to notify soil classifiers by November 1 that their registration fees are due. If per chance one does not pay by December 31st, one is subject to a $25 late fee.

On page 7, the bill draft sets forth a simplified process for the consideration of complaints.
It allows anyone to file a complaint and unless the board deems it to be frivolous, there must be a hearing under 28-32, the state's administrative practices act.

Disciplinary action may include the suspension of one's license, the revocation of one's license, or the refusal to renew one's license. In order to get to that point, one must have violated the chapter, submitted false or misleading information in connection with one's application, be found guilty of gross negligence, incompetence, or misconduct, in the practice of soil classification or must have violated the code of ethics adopted by the board.

In the middle of page 7, you will see the section on exemptions.
The first exemption is a cleaned up wording of the current law. It provides that the chapter does not apply to an employee or a subordinate of a registered soil classifier, provided the work and any determinations are deemed to be those of the soil classifier.

On Page 7, Line 22, the second exemption is set forth.
Let me articulate what is in current law.
"The practice of soil classifying by any person regularly employed to perform soil classifying services solely for that person's employer or for a subsidiary or affiliated corporation or limited liability company of that person's employer, providing the soil classifying performed is in connection with the property, products, or services of that person's employer."

After hearing from several state agencies and representatives of the private sector, the interim committee tried to simplify the language.

On page 7, line 22, the bill provides that the chapter -- i.e. the requirements for registration as a soil classifier do not apply to an individual who is identifying hydric soils for purposes of wetland delineation, provided that individual is:

1. Employed by this state;
2. The identification of hydric soils for purposes of wetland delineation occurs in the normal course of that individual's employment; and
3. The individual has completed a course in wetland delineation.

Then, the interim committee was asked to include an industry exemption. That means that:
1. The individual is employed by a private entity;
2. The activity being described, in this case wetland delineation, occurs within the normal scope of the individual's employment;
3. The individual's employer takes legal responsibility for the work and determinations of that individual; and
4. The individual has completed a course in wetland delineation.

The type of course that was contemplated by the interim committee was defined as providing the student with a basic understanding regarding the interaction of vegetation, soils, and hydrology in wetlands and providing the student with the background necessary to identify wetlands and determine their boundaries.

The committee was told about such courses being offered in Minnesota for their wetland delineators and the committee was told that Regulatory IV was a course offered by the US Army Corps of Engineers.

At the final meeting, the committee was informed that Regulatory IV is available only to federal employees, so that reference will have to be removed.

The final section of the bill directs the board of soil classifiers, in conjunction with the director of the school of natural resource sciences at NDSU to review advances in the field of soil classification, as well as anticipated changes in the manner of classifying soils, with a view to determining the feasibility and desirability of requiring continuing education as a condition of registration renewal for soil classifiers. The board is to present its conclusions and recommendations to the legislative management.

Right now, there is no statutory requirement for continuing education in this field. The practice of soil classification is, like most other fields, being impacted by new discoveries and technologies, and there is a desire to ensure that those who practice are current. What those requirements would look like, how they would be delivered, administered, and paid for are all questions that the board and NDSU could sort out together.

#2-1

Thursday, January 29, 2015

SENATE AGRICULTURE COMMITTEE
SB 2026

SENATOR MILLER AND MEMBERS OF THE COMMITTEE:

My name is Jack McDonald. I am appearing today on behalf of the Professional Soil Classifiers of North Dakota. We support this legislation but only with amendments listed on the back side of this testimony.

Three members of the Association will be testifying today to further explain these amendments and the Association's position on this bill:

1. Lawrence Edland, Edlund's Soil Consulting
2. C.J. Heidt, private soil consultant
3. Lance G. Loken, Western Plains Consulting

The soil classifiers are certainly willing to work with the other parties of interest on this bill to see if a compromise can be reached to present one comprehensive set of amendments to the Committee.

However, the soil classifiers will never agree to legislation that will in effect drive the profession, which has served North Dakota farmers, public entities and the state and federal government for over 50 years, out of existence. We believe that, without amendment, this will be the outcome of SB 2026.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

#2-2

PROPOSED AMENDMENTS TO SB 2026

SUBMITTED BY PROFFESSIONAL SOIL CLASSIFIERS ASSOCIATION

SENATE AGRICULTURE COMMITTEE – January 29, 2015

On page 2, line 4, delete "; and" and insert in lieu thereof "."

On page 2, line 5, delete "soils." And insert in lieu thereof "soils; and"

On page 2, after line 5, add:

f. The preparation of soil survey maps and reports.

On page 2, line 10, delete "including the practice of environmental engineering"

On page 6, line 20, delete "November" and insert in lieu thereof "December"

On page 7, line 22, after the word "to" delete the remainder of the line and insert in lieu thereof "a state employee if the work occurs in the normal course of his or her employment. Private contractors hired by the state are not included in this exemption."

On page 7, delete lines 23 – 30.

On page 8, delete lines 1-13.

On page 8, line 17, after the word **"CONTINUING"** delete the remainder of the line and insert in lieu thereof **"PROFESSIONAL EDUCATION – RULES.** The board shall adopt rules to establish continuing education requirements for professional soil classifiers. Compliance with these rules must be documented at the times and in the manner prescribed by the board."

On page 8, delete lines 18-24.

And renumber accordingly

Senate Bill 2026

Presented by: Lawrence Edland, Registered Soil Classifier, Edland's Soil Consulting

Before: Senate Agriculture Committee

The Honorable Joe Miller, Chairman

Date: January 29th, 2015

Chairman Miller, Vice-Chairman Luick, members of the Senate agriculture committee, my name is Lawrence Edland. I am a registered soil classifier and a member of the Professional Soil Classifiers Association of North Dakota. I am the sole-proprietor of Edland's Soil Consulting, providing soil interpretations for: waste site disposal areas, coal mine reclamation, septic system sites as well as hydric soil determinations.

North Dakota has registered soil classifiers since the 1973 legislative session. The law was enacted as a means to recognize professionals and established criteria for individuals evaluating the soil resources of the State. This was particularly important at the time because of the need for reclamation after the onset of extensive surface coal mining. Since that time, soil classifiers have been instrumental in these and many more activities, including identification of hydric soils. As the oil activity continues in the state, we do not know the soils related issues that may surface. It may be that we become involved in salt spills and pipeline reclamation. Ultimately, it is important that the state have a well thought out Soil Classifiers bill that will continue to serve the people and the resource.

The soil classifiers law is similar to the professional engineering's statue in that it requires a number of years of experience and a thorough testing program to become registered. Soil Classifiers in the state are regulated by a board of five individuals-- all appointed by the governor. Over the past 40-plus years, soil classifiers have been successful in helping to protect North Dakota's most valuable natural resource -- the soil.

The soil classifiers statute has been largely unchanged since its passage in 1973. Over the last couple of years, the Board of Registration and legislative council has initiated a process to update the language of the law. A number of soil classifier and other professionals have provided testimony on the proposed versions of the bill during the interim legislative committee hearings. Most of modifications are minor and deal with routine changes that the Board and Association support. I will be discussing these minor amendments. However, Section 43-36.1-23 on page 7 of this bill regarding exemptions to the soil classifiers law, soil classifiers had no input before these changes were added and we have serious concern with this language. Other amendments that may be offered in testimony regarding this exemption, do not offer the protection needed for agricultural land! My colleagues, CJ Heidt and Lance Loken, will be discussing these items.

At this time we are proposing the following amendments:

On page 2, after line 5, add:

f. The preparation of soil survey maps and reports.

This was proposed at the April interim legislative committee hearing by the Professional Soil Classifiers in attendance. I am not sure why it was removed from the final bill's language.

On page 2, line 10, delete "including the practice of environmental engineering"

d. The practice of engineering, as defined in chapter 43-19.1

There is no need to single out environmental engineering as no other engineering specialties are listed. The words "environmental engineering" is not in chapter 43-19.1, and not defined by state law. Including "environment engineering" in this section will cause confusion between determining the responsibilities of soil classifies and engineers.

On page 6, line 20, delete "November" and insert in lieu thereof "December"

Change to read:

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

Changing the date to December first would allow the secretary to complete required notification to classifiers to coincide with other administrative business. Early November notification has led to additional mailings and emails.

On page 8, line 17 Section 5

Change to read:

Section 5 – CONTINUING PROFESSIONAL EDUCATION - RULES.
The board shall adopt rules to establish continuing education requirements for professional soil classifiers. Compliance with these rules must be documented at the times, and in the manner, as is required by the board.

Section 5 as currently written would delay implementation. The proposed amendment mirrors what is in the engineering law. The board should draw on expertise from any number of sources including NDSU, private industry, etc to establish appropriate rules.

We respectfully request these amendments be adopted and included in this bill.

Thank you,

Lawrence E. Edland
Registered Soil Classifier
1400 9th Ave. NW
Mandan, ND 58554
701-663-0458

1/29/15 #4

SENATE BILL NO. 2026

Testimony of C. J. Heidt

Before Senate Standing Committee - Agriculture

Chairman Miller, my name is C. J. Heidt. I am a Registered Professional Soil Classifier, a member of the Professional Soil Classifiers Association of North Dakota, and have a private soil consulting business. I am representing the Professional Soil Classifiers Association of North Dakota and am going to address Section 3. Chapter 43-36.1-23 Subsections 2 and 3 regarding exemptions (Page 7 lines 22 – 30; and Page 8 lines 1- 13).

As Mr. Edland indicated Professional Soil Classifiers, myself included, provided testimony at both the April and October interim legislative committee hearings. However, what ended up in the proposed bill under Section 3 regarding exemptions was not discussed with any Professional Soil Classifiers that the Association is aware of. We have serious concerns about exemptions under these two subsections. Being present at discussions in 1972 and 1973, regarding exemptions under the original bill, I can state that the main objective was to exempt government employees from the law as long as they were doing the work strictly for their agencies. Our proposed changes keep that intent intact.

Section 3. 43-36.1-23 Exemptions.

(Page 7 line 22)

Changes subsection 2. to read: **2. This chapter does not apply to an individual provided the individual is employed by this state and the work occurs in the normal course of the individuals employment. Private or for profit contractors hired by the state are not included in this exemption.**

It should be noted that the engineering law has no such exemption for the state. This would be our preference as well, but the amendment keeps the original intent of the law and reduces potential opposition from states agencies because of potential costs they may incur if no exemption for them existed. The exemption in the amendment would allow a state employee to do any state related Soil Classifier work. As presently worded, this subsection was ill conceived and poorly written.

The exemptions as written in the current law (43-36-24) have caused confusion, misinterpretation, and misuse, whether intentional or not. The proposed amendment keeps with the original intent, creates clarity, and simplifies the meaning. It is neutral regarding any costs to the state.

Page 7 lines 23 - 30 delete, and Page 8 lines 1 -3 delete

If this amendment is approved as we have proposed, it would eliminate the need for the current language in subsections 2.a. (1), (2), and (3); and 2.b. (1), (2), (3), and (4).

- 2.a (1) Page 7 line 24 – Proposed Subsection 2 above replaces this item. It retains and clarifies the state exemption.
- 2.a (2), and 2.b (2) Page 7 lines 25 – 26 and lines 29- 30 - We do not support exempting a single soil interpretation, such as identification of hydric soils. When the law was passed in 1973 wetland issues and hydric soils were not on anyone's radar. North Dakota was fortunate to have a law in place to handle the issue. We do not know what the next

important soil interpretation may be. We can not be making exemptions simply because certain interests may see a commercial market for a particular soil interpretation or are inconvenienced by being required to deal with Soil Classifiers.

- 2.a (3), and 2.b (4) Page 7 line 27 and Page 8 line 3 - We do not think a single course in wetland delineation qualifies anyone to identify hydric soils. These courses may last only a few days, not involve field work, be held out of state, exams optional, and a passing grade not required to receive a certificate. The COE course referred to in 3.a Page 8 lines 9 – 10 of this section is not available to state or private employees.
- 2.b (1) Page 7 line 28 - We do not think private entities should be exempted from the identification of hydric soils for the purposes of wetland delineation. Despite what was been alleged in other testimony, this is not about Soil Classifiers protecting our "turf", but of other interests grabbing turf and lowering standards.
- 2.b (3) Page 8 lines 1 -2 - The employer is always responsible for the work of their employees. Is this only the case for hydric soil determinations? This language is just an attempt to placate into accepting this exemption. The expectation that companies or individuals will self-regulate because of this clause will not be effective. There is no contingency for the self-employed. Are they not responsible for their work? This item is not needed regardless if the proposed amendment is adopted.

These subsections (2.a and 2.b) Page 7 lines 22 – 30 and Page 8 lines1 -3 as written, address state employees and employees of private entities. However, self-employed or sole proprietorships are not addressed. Another indication of the ill-conceived nature of this subsection.

There has been or likely will be testimony regarding an addition to subsection 2.b. (Page 7 line 30) that says "an individual meets qualifications to conduct wetland delineations required by the regulatory agency for which the wetland delineation is to be reviewed and approved". There are a number of points that need to be made regarding this proposal:

1. Where are these qualifications given?
2. Should or can federal regulator agencies rules and requirements take precedent over state law or be in lieu of state law?
3. Will or do agencies have different qualification?
    a. Will they be required to develop them?
    b. Will they be consistent?
    c. State - Health Dept, PSC, NDDOT, SWC
    d. Federal - COE, NRCS, EPA
    e. Each project could require different qualifications
4. Who determines if this being done?
    a. Classifiers Board?
        i. Would put an undue burden on Board to so things they may not be qualified to do
    b. Who else?
5. How would this mechanism work?
    a. Would entities have to prove qualifications with each project?
    b. Who would they provide information to?

c. Require companies or even subcontractors to determine who has jurisdiction before undertaking a project? This would be required for them to know if their employees meet the qualifications of that agency.
d. Often times the project determines who has jurisdiction (COE, SWC, NRCS, etc), it is not always known ahead of time.

6. Requirements of federal, or even state, agencies will not suffice or be effective in ensuring adequate qualifications to identify hydric soils and are essentially a red herring intended to give a false sense of security.

Page 8 lines 4 -13 delete

Eliminate subsection 3.a, b, and c.

- 3. Page 8 lines 4 -8 – See comments on wetland delineation courses in 2.a. (3) and 2.b (4) above.
- 3.a .Page 8 line 9 – 10 –This subsection will cause significant problems. The reference to a specific course or federal agency has no place in North Dakota law. Changes in the course name or number, or a change in the agency offering a course will very likely change with time and make the law out of date. Currently, the course mentioned is not available to state and private entities, so is not helpful to individuals requiring training. As stated above, single courses of this nature are not adequate to identify hydric soils.
- 3.b. Page 8 line 11 – 12 – These items in this subsection are ambiguous and ill defined, and therefore meaningless.
- 3.c. Page 8 line 13– The Board should not be put in a position of approving or disapproving of wetland delineation courses. Aspects of wetland delineation may be outside the expertise of Soil Classifiers (i.e. hydrophytic vegetation). Soil Classifiers prefer to stay within their area of expertise and would prefer other disciplines do likewise.

Summary

If the Soil Classifier law incudes the exemption as currently given, there is no assurance private firms will provide qualified persons to do the work. On some wetland delineation projects, I have observed unqualified individuals doing vegetation identification. For example, not being able to identify common plants such as alfalfa, oats, or ragweed. Are we to believe they can be entrusted to make a complex soil interpretation and classification, such as hydric soil identification? Can they ascertain the subtle difference between the non-hydric Hamerly soil, an Aeric Calciaquoll from the hydric Vallers soil, a Typic Calciaquoll? Both of these soils have an accumulation of lime and occur on flats and the edge of wetlands. It should be noted that they both have soil profiles that are also similar to soils that occur on well drained areas.

Accurate wetland delineation is important for state and private concerns. If the state feels their employees are qualified for their needs may be one thing, however, when you hire yourself out for profit, the state has an obligation to protect the public and the resource. Hydric soil identification has tremendous impacts on projects of all kinds. This includes state projects relating to highway construction and mitigation. Of equal or more importance are wetland issues on private agricultural lands. Wetland drainage issues, farm benefits and noncompliance issues, and mitigation all involve hydric soil determinations that can have substantial economic impacts on land owners and operators. In

a single case of a North Dakota producer I was representing regarding potential wetland violations before the State Agricultural Mediation Board hearing, over $750,000 in USDA program benefits was at stake, along with his livelihood and that of his son. Can the state be comfortable allowing individuals or companies with no or meaningless certification to make hydric soil determinations?

These determinations can be particularly difficult in North Dakota, especially where tillage has removed natural vegetation, and becomes more so, when drainage is involved on agricultural lands. Hydric soils are often the only indicator present in these conditions. In any case, hydrophytic vegetation is often not a good indicator of the wetland boundary. Too much reliance on this one indicator can result in the wetland being larger than it actually is. This is particularly true in the wet cycle we have been in. It is vitally important that the people doing hydric soil identification are qualified and professionals. They will need to be able to present and defend their work to federal and state agencies, and in the courts.

Hydric soil identification involves an interpretation of the soil profile and the landscape. Registered Professional Soil Classifiers are uniquely qualified to make all the necessary assessments for hydric soil identification.

I recommend these amendments be adopted in order to continue to protect the citizens and soil resources of the state. The amendments make the law clear, concise and unambiguous. Should the exemptions in Section 3. 43-36.1-23 remain as they are, we support a do not pass for this bill.

Chairman Miller and Members of the Committee, thank you for your time, the opportunity to testify, and your consideration in this important matter.

#5

Senate Bill 2026
Testimony by Lance G. Loken, PSC
Before the North Dakota Senate Standing Agriculture Committee
January 29, 2015

My name is Lance Loken. I am a Registered Professional Soil Classifier in North Dakota and a member of the Professional Soil Classifiers Association of North Dakota. I am President of Western Plains Consulting, Inc. (WPC), a North Dakota-based environmental and natural resources consulting firm. I am a North Dakotan by birth, grew up on a small grain and dairy farm in Benson County, and received a BS Degree in Geology and a MS in Soil Science, both from NDSU.

My testimony here today is from the perspective of a small business owner. I have owned and operated my own firm since 1993. We offer a variety of services at WPC, and wetlands projects are a significant part of the work we do. Additionally, WPC has been involved in numerous oil field responses to crude oil, production water, and the combined emulsion of both, several of which were near wetlands, creeks, rivers, and Lake Sakakawea. Our extensive knowledge of how to handle these types of impacts has been critical in the assessment, remediation and reclamation of the impacted soils and groundwater. The skills of WPC's professional soil classifiers have been especially critical in dealing with soil impacts from salt-water releases on grasslands and croplands. Our project workload has included these types of projects continuously since 2008. We provide a special and critical service in North Dakota.

I support the changes that Mr. Edland and Mr. Heidt have outlined to Bill 2026. As presently written, the Bill does a disservice to the State and will harm small business in North Dakota -- to the benefit of engineering firms.

I have attended some of the testimony presented at interim committee meetings and have seen individuals downplay the importance of hydric soil determinations. There have been attempts to buffalo folks into believing the work registered classifiers do just isn't that tough. WPC has been involved in several large scale wetland projects and I can speak from experience that this far from the true. Our large scale wetland projects have included the Devils Lakes emergency outlets for the State Water Commission or their engineering contractors, and large scale wetland violation issues. Our wetland projects have ranged from as little as $2,500 to over $1,000,000.00. Additionally, the State Water Commission retained us to perform a baseline soils evaluation project along one of the outlets prior to the outlet going into service.

There are references commonly cited regarding identification of hydric soils (COE Manual, COE Reg IV training, Field Indicators of Hydric Soils). Although these are helpful in identifying hydric soils, they are no substitute for proper education and experience. Some hydric soils do not have indicators and some non-hydric soils have indicators. Extensive experience and knowledge of soil landscape relationships is necessary. Qualifications that are unique to Soil Classifiers.

Bill 2026, as currently proposed, would allow individuals and firms that with inadequate education in soils, or have not passed any professional certification process and with little "real" expertise in wetland soil interpretations to perform wetlands work. The weakening of the law could potentially have a negative impact on agricultural producers and agencies in the state. My firm has worked as expert witness on numerous cases. We pride ourselves meeting the "bar" for our various professions at WPC and this includes either professional registration or certification. If the state is involved in a wetland legal issue, would you rather the state go to court with a Registered Professional Soil Classifier or an inadequately trained wetland delineator with no certification?

The numbers of Soil Classifiers is not an issue. There is not enough work to keep more than a handful of Soil Classifiers busy full time. There are no projects not being done or completed because of lack of Soil Classifiers. As demand grows, people will move in to fill the need. This is already happening. Several engineering firms have invested in having staff complete the process to become soil classifiers by taking the examination, and several of these firms now employ registered classifiers. The current amendments in the bill would not take into account what some engineering firms have perceived as a need, and have already invested time and money to have their staff become registered. The solution to any perceived problem should not be to not only lower the standard, but essentially to have no standards regarding identification of hydric soils. Another solution for engineering firms could include hiring Soil Classifiers away from state and federal government agencies. Engineering firms have, in the past, hired engineers from state and government agencies to meet their needs. This is a common practice for not just engineering firms, but environmental firms who are looking to hire other types of staff, including botanists and biologists. When we advertise for new staff, it is common to have multiple government employees apply for the position.

The individual Soil Classifiers that are testifying here today are all with different firms. All of us here today have worked on North Dakota-sponsored projects. We are all competitors. And this competition is what saves money for our clients. We are small firms, and to my knowledge, none of us are living it up in Hawaii, Nevada, or Florida in the winter months. We are pursuing our careers, getting our hands dirty – literally, and filling a niche in the economy that assists in the protection of North Dakota's most important resource – the soil. Soil Classifiers are not Goliath in this. Our "turf" is minuscule compared to those who wish to profit by encroaching on turf by being able to make this single soil interpretation.

The members of our profession do have unique and special skills. We have a unique, in-depth understanding of the complexity of the soils on the landscapes here in North Dakota. We understand the genesis of these soils; we understand soil tilth, water movement through soils, water holding capacity, the effects of our climate, the effects of time, and the effects of anthropogenic use of the soil. These skills work not only in wetlands, but across the landscape, from the wet meadow to the hill tops. Soils are interconnected, and their development has taken thousands of years to get us to where we are now. We are the professionals you have entrusted to protect this resource. I can assure you that passing the examinations to become a Registered

Professional Classifier is incredibly difficult. But once you pass the examinations, you have the confidence that you have the ability to meet the challenges of protecting the soil resource for today and for future generations. The State of North Dakota should be proud of establishing this law in 1973.

Thank you for your time today. You have an important decision to make. As a small business owner and a Registered Soil Classier, I ask you to not weaken this law and to approve the amendments we have presented. Professional Soil Classifiers respect the unique qualifications, education, and experience of other professions, and expect others to do likewise.

#6

PROPOSED AMENDMENTS TO SENATE BILL NO. 2026

Presented by Sandi Tabor, KLJ

1/29/15

Page 7, line 28, overstrike "private" and insert immediately thereafter "for profit"

Page 7, line 30, after the semicolon insert:

"(3) The individual meets the qualifications to conduct wetland delineations required by the regulatory agency for which the wetland delineation is to be reviewed and approved;

Page 8, line 1, delete "(3)" and insert immediately thereafter "(4)"

Page 8, line 3, delete "(4)" and insert immediately thereafter "(5)"

Renumber accordingly.

#7

SENATE AGRICULTURE COMMITTEE

January 29, 2015 9:00a.m. / Roosevelt Park

North Dakota Department of Transportation
Robert Fode, Director of Project Development
Senate Bill 2026

Mr. Chairman and members of the Committee – I am Robert Fode, Director for the Office of Project Development at the North Dakota Department of Transportation (NDDOT). Thank you for giving me the opportunity to support SB 2026 today.

The current professional soil classifiers law (NDCC 43-36-24.4) exempts the use of classifiers for soil classifying performed in connection with the property, products or services of that person's employer. In accordance with the exemption, NDDOT does not require professional soil classifiers for wetland delineations completed by Department staff.

Senate Bill 2026 clarifies that exemption allowing state employees, trained in wetland delineations, to complete wetland delineations for NDDOT projects including potential mitigation sites.

The department had an opportunity to testify on a number of occasions in front of the Interim Committee on Agriculture, and this committee captured all the concerns presented. Senate Bill 2026 in section 43-36.1-23 clarifies the exemption for wetland delineations completed by the Department.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

#8

Senate Bill 2026

Presented by: **Dean Moos, Assistant Director, Reclamation Division**
Public Service Commission

Before: **Senate Agriculture Committee**
The Honorable Joe Miller, Chairman

Date: **January 29, 2015**

TESTIMONY

Mister Chairman and committee members, I am Dean Moos, Assistant Director, Reclamation Division of the Public Service Commission. I am also a registered Professional Soil Classifier. Today I will provide testimony in support of Senate Bill 2026 and explain how the Reclamation Division utilizes information provided by Professional Soil Classifiers.

The Public Service Commission is responsible for administering and enforcing the state's surface coal mining and reclamation laws and rules. North Dakota passed its first reclamation law in 1969 and amended it every two years thereafter until passage of the Federal Surface Mining Control and Reclamation Act of 1977. North Dakota enacted a new reclamation law in 1979 that is similar to the Federal act and we received the required Federal approval of our program in 1980.

Before mining can commence, coal companies must submit a mining permit application to the Public Service Commission for review and approval. This includes pre-mine environmental resource information, mining plans, and reclamation plans.

Having accurate baseline environmental resource information prior to mining disturbance is important because it documents the premine condition and the information is used for developing mining and reclamation plans. In addition, some of the pre-mine baseline environmental information is used for developing the reclamation success standards.

Mining Companies must hire a Professional Soil Classifier to prepare a detailed pre-mine soil survey. The soil survey information is used to identify the soils that are present in the permit area, the suitability (quality) of those soil resources for reclamation, and the amounts of topsoil and subsoil that are available for salvage and reclamation. The soil survey information is also used to determine the productive capability of the pre-mine soils. Determining the productive capability of the pre-mine soils is especially important since North Dakota's reclamation law requires 100% restoration of pre-mine productivity of lands that will be mined and reclaimed for agricultural purposes. Productivity ratings assigned to the various soil types are used to calculate the required reclamation success standards of reclaimed agricultural lands in North Dakota. The soil survey information is also utilized in a number of other baseline inventories and surveys including wetlands, range site identification, and in identifying any potential alluvial valley floors.

The pre-mine soil survey prepared by a Professional Soil Classifier is much more detailed than the county soil survey that is published by the Natural Resources Conservation Service. In addition, it provides a number of data sets or interpretations that are not available in the standard published soil surveys

such as projected depths of topsoil and subsoil available for salvage and respread.

North Dakota's reclamation law (NDCC 38-14.1-14[1][t]) requires that the mine permit soil survey be prepared by a Professional Soil Classifier. This requirement has been part of North Dakota's reclamation law since 1975. You will note Sections 1 and 2 of Senate Bill No. 2026 amend the appropriate sections of the reclamation law to reflect the proposed changes to Chapter 43-36.1.

Currently there are 135,000 acres under mining permit in North Dakota. In addition, the Commission is currently reviewing applications to permit approximately an additional 10,000 acres. To date approximately 27,000 acres has been bond released. The soil surveys for all the acreage currently under permit and that under review, as well as the bond released acreage that was permitted since 1975, were prepared by Professional Soil Classifiers. The expertise provided Professional Soil Classifiers with regard to mine permit soil surveys contributes to the overall successful reclamation program administered by the Public Service Commission.

That concludes my testimony. I would happy to answer any questions that you may have.

#1
2/6/15

PROPOSED AMENDMENTS TO SB 2026

On page 2, line 4, delete "; and" and insert in lieu thereof "."

On page 2, line 5, delete "soils." And insert in lieu thereof "soils; and"

On page 2, after line 5, add:

f. The preparation of soil survey maps and reports.

On page 2, line 10, delete "including the practice of environmental engineering"

On page 6, line 20, delete "November" and insert in lieu thereof "December"

On page 7, line 22, after the word "to" delete the remainder of the line and insert in lieu thereof "**to hydric soil determinations for North Dakota Department of Transportation projects at the discretion of that agency**."

On page 7, delete lines 23 – 30.

On page 8, delete lines 1-13.

On page 8, line 17, after the word "**CONTINUING**" delete the remainder of the line and insert in lieu thereof "**PROFESSIONAL EDUCATION – RULES.** The board shall adopt rules to establish continuing education requirements for professional soil classifiers. Compliance with these rules must be documented at the times and in the manner prescribed by the board."

On page 8, delete lines 18-24.

And renumber accordingly

#1

2/19/15

15.0010.05001
Title.

Prepared by the Legislative Council staff for
Senator Miller
February 13, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2026

Page 2, line 4, remove "and"

Page 2, line 5, replace "identification of hydric soils" with "preparation of soil survey maps and reports"

Page 2, line 10, remove ", including the practice"

Page 2, line 11, remove "of environmental engineering"

Page 5, line 5, remove ", including hydric soils"

Page 5, line 9, remove "Septic system sitings;"

Page 5, line 10, remove "f."

Page 5, line 11, replace "g." with "f."

Page 5, line 13, replaced the underscored comma with an underscored period

Page 5, remove lines 14 through 18

Page 6, line 6, remove ", provided there is a waiting period of at least six"

Page 6, line 7, replace "months from the date of the previous attempt" with "at the next regularly scheduled time or at a time agreed to under subsection 3"

Page 6, remove lines 9 and 10

Page 6, line 20, replace "November" with "December"

Page 7, line 28, replace "private" with "for profit"

Page 8, line 1, after "(3)" insert: "The individual is deemed qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed;

(4)"

Page 8, line 3, replace "(4)" with "(5)"

Page 8, line 4, after "must" insert "consist of at least forty hours and"

Page 8, remove lines 9 and 10

Page 8, line 11, replace "b." with "a."

Page 8, line 13, replace "c." with "b."

Renumber accordingly

#2
2/19/15

15.0010.05001

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2026

Introduced by

Legislative Management

(Agriculture Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

43-36.1-01. Definition.

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

   a. The examination of landscape and landform characteristics;

b. The sampling or analysis, or both, of soil properties and characteristics;

c. The identification and description of soil profile characteristics, including soil horizons;

d. The identification of plant growth material; and

e. The ~~identification of hydric soils~~preparation of soil survey maps and reports.

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

a. The sampling and testing of soil for fertility status;

b. The sampling and testing of soil for the presence of construction materials;

c. The practice of architecture, as defined in chapter 43-03;

d. The practice of engineering, as defined in chapter 43-19.1~~, including the practice of environmental engineering~~;

e. The practice of landscape architecture, as defined in chapter 43-03; or

f. Water well contracting, water well pump and pitless unit installing, monitoring well contracting, and geothermal system drilling, if performed by persons certified in accordance with chapter 43-35.

43-36.1-02. Board of soil classifiers.

1. The board of soil classifiers consists of five individuals, three of whom must be soil classifiers registered under this chapter.

2. The governor shall appoint each member of the board.

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

1. The term of office for each member is five years and begins on July first.

2. The terms must be staggered so that no more than one term expires each year.

3. A member may not serve more than three consecutive terms.

4. If an individual is appointed to fill a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds two years.

5. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the governor shall appoint another individual for the remainder of the term.

43-36.1-04. Board members - Compensation.

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

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

43-36.1-05. Board members - Removal.

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

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

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

43-36.1-07. Board - Powers.

The board of soil classifiers may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any lawful purpose;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

43-36.1-08. Board - Duties.

1. The board of soil classifiers shall adopt a code of ethics that is applicable to all individuals registered under this chapter.
2. The board shall develop and make available on its website a list of each course, by name and number, which is:
   a. Currently offered by an accredited institution of higher education in this state and in the bordering states; and
   b. Determined by the board to provide academic preparation appropriate to the classification of soils.

43-36.1-09. Receipts and disbursements.

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

43-36.1-10. Records.

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

43-36.1-11. Review of financial transactions.

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

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

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

43-36.1-13. Requirements for registration.

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

1. Obtain from and file an application form with the board of soil classifiers;
2. Provide the names of three references, one of whom must:
   a. Be an individual registered with the board, in accordance with this chapter; and
   b. Have personal knowledge of the applicant's activities, as set forth in accordance with subsection 5;
3. Submit a transcript indicating that:
   a. The applicant holds a baccalaureate or graduate degree, in a science-related field, from an accredited institution of higher education; and
   b. At least fifteen of the credits constituting the applicant's degree:
      (1) Come from the list of qualifying soil-related courses, as set forth in section 43-36.1-08; or

(2) Have been otherwise approved by the board;

4. Submit evidence of having achieved a passing score on a fundamentals of soil science examination;

5. Submit documentation of experience in or exposure to:

a. The identification of soils~~, including hydric soils~~;

b. Soil surveys;

c. Preparation of reports pertaining to soil identification or soil surveys;

d. Identification of plant growth materials;

e. ~~Septic system sitings;~~

~~f.~~ Land reclamation; or

~~g.~~f. Other similar activities deemed by the board to be related to the classification of soils; and

6. Obtain a passing score on a practical examination administered by the board~~.~~. ~~provided:~~

~~a. There is 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; or~~

~~b. The board waives the waiting period set forth in subdivision a.~~

43-36.1-14. Application fee.

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

43-36.1-15. Registration fee.

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

43-36.1-16. Examinations.

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

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

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

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

5. If an individual does not receive a passing grade on a practical examination, the individual may retake the examination~~, provided there is a waiting period of at least six months from the date of the previous attempt~~ at the next regularly scheduled time or at a time agreed to under subsection 3. The board may charge an additional fee for an examination offered under this subsection.

~~6. If an individual does not receive a passing grade after three attempts, the individual is barred from retaking the examination for a period of three years.~~

43-36.1-17. Certificate of registration.

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

43-36.1-18. Expiration - Renewal.

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

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

3. The board shall send the notice:

   a. Electronically; or

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

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

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

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

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

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

43-36.1-21. Complaint - Hearing.

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

43-36.1-22. Disciplinary action.

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

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

43-36.1-23. Exemptions.

1. This chapter does not apply to an employee or a subordinate of a soil classifier registered in accordance with this chapter, provided the work and any determinations are deemed to be those of the soil classifier.
2. This chapter does not apply to an individual identifying hydric soils for purposes of wetland delineation, provided:
   a. (1) The individual is employed by this state;
      (2) The identification of hydric soils for purposes of wetland delineation occurs in the normal course of the individual's employment; and
      (3) The individual has completed a course in wetland delineation; or

b. (1) The individual is employed by a ~~private~~for profit entity;

(2) The identification of hydric soils for purposes of wetland delineation occurs in the normal course of the individual's employment;

(3) The individual is deemed qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed;

(4) The individual's employer takes legal responsibility for the work and determinations of the individual; and

~~(4)~~(5) The individual has completed a course in wetland delineation.

3. For purposes of this section, a course in wetland delineation must consist of at least forty hours and 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 the requirements of this section include:

~~a. Regulatory IV, a federal interagency training course in wetland identification and delineation, offered by the United States Army Corps of Engineers;~~

~~b.~~a. Wetland delineation certification programs offered by accredited institutions of higher education or governmental agencies; and

~~c.~~b. Any similar training or certification programs approved by the board.

43-36.1-24. Violation - Penalty.

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

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

SECTION 5. CONTINUING EDUCATION FOR SOIL CLASSIFIERS - REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2016, the board of soil classifiers, in conjunction with the director of the school of natural resource sciences at North Dakota state university, or the director's designee, shall review advances in the field of soil classification, as well as anticipated changes in the manner of classifying soils, with a view to determining the feasibility and desirability of requiring continuing education as a condition of registration renewal for soil classifiers. The board shall present its conclusions and recommendations to the legislative management.

3/12/15

SENATE BILL NO. 2026 - Soil Classifiers
Presentation by
L. Anita Thomas, J.D., LL.M.
Senior Counsel
North Dakota Legislative Council

During the last session, the soil classifiers came to the Legislative Assembly with a request to alter the application process for becoming a soil classifier. The process had required an individual to be a soil classifier in training and to present an application containing five references, three of whom must be professional soil classifiers having personal knowledge of the applicant's soil classifying experience. This was changed so that only three references were required and only one of the three had to be a professional soil classifier having personal knowledge of the applicant's experience.

That change was made in 2013 House Bill 1154. As that bill was being worked on, some of your colleagues realized that there were a few additional issues:

1. **The definition of a soil classifier wasn't readily obvious;**
2. **What fell under the definition of soil classification wasn't readily obvious and that was a problem because it's a class B misdemeanor to cross that line-- to perform soil classification without being a registered soil classifier.**
3. **It seemed to take an inordinately long time to become a soil classifier -- i.e. A time period comparable to that required for becoming a physician; and**
4. **Soil classification seemed to be a dying art, if you looked at the number of those still practicing.**

Finally, it was 1973 when the newly formed soil classifiers association pursued legislation to recognize soil classification as a profession and to establish thresholds for entry into that profession. In the ensuing 40 years, there have been relatively few changes to the original legislation.

That combination of factors, led your colleagues in the 2013 legislative assembly to include in the bill a directive for a study and a rewrite of the chapter.

Let's begin with what is a soil classifier.

A professional soil classifier is currently defined as an individual who is engaged in the practice of soil classifying and the practice of professional soil classifying. Section 43-36-01 defines those two terms as meaning:

> **[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.**

An individual is construed to practice or offer to practice soil classifying "within the meaning and intent of this chapter" if the individual "by verbal claim, sign, advertisement, letterhead, card, or use of some other title represents that the person is a soil classifier. . . . "

The statute goes on to provide that this does not extend to individuals who are specifically exempted by the chapter nor to individuals who "sample and test soil for fertility status or construction materials and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. " An individual may not be construed to practice soil classifying unless the individual "offers soil classifying services to or performs such soil classifying for the public." [See, NDCC Section 43-36-01(3)]

That verbiage didn't really shed a lot of light on the quest to define this profession.
Here's the definition in the bill as rewritten . . . You will find this at the bottom of page 1.

"Soil classification" means the determination of a soil's suitability for a particular purpose through:

1. The examination of landscape and landform characteristics;
2. The sampling or analysis, or both, of soil properties and characteristics;
3. The identification and description of soil profile characteristics, including soil horizons;
4. The identification of plant growth material; and
5. The preparation of soil survey maps and reports.

On Page 2, beginning at line 6, soil classification does not include:

1. The sampling and testing of soil for fertility status;
2. The sampling and testing of soil for the presence of construction materials;
3. The practice of architecture;
4. The practice of engineering;
5. The practice of landscape architecture; or
6. Water well contracting, and the various activities associated with that.

Continuing on page 2, the bill maintains a board of soil classifiers consisting of five individuals appointed by the governor. Three of the board members must be soil classifiers registered under the chapter. Like current law, the term of office remains at five years. Unlike current law, the proposed bill adds a limit of three consecutive terms. In this case, that is still 15 years in one's professional career.

At the bottom of page 2, the compensation cap was increased from $62.50 to $135 per diem.

In the middle of page 3, you will see the list of board powers. This is standard language for boards and commissions and not a significant departure from what the board can currently do.

I'll come back to the board's duties in a moment.

At the top of page 4, the interim committee cleaned up and modernized the board's record keeping requirements and carried forth the standard state audit requirements which are set forth in section 54-10-27. This section requires boards and commissions to provide for an audit every two years. If, however, an occupational or professional board has less than $50,000 in annual receipts, that board may simply submit an annual report to the state auditor.

Toward the bottom of Page 4, we start getting into how one actually becomes a soil classifier. 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 board.

One option for becoming a soil classifier would involve an individual being a graduate of a "soils curriculum approved by the board as satisfactory." Current law does not, however, indicate what that might be.

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.

So, if you took a four year soils curriculum approved by the board, you could get a soil classifier in training certificate, and with four years of approved experience, take the soil classifiers exam.

In order to get the necessary soil classifier in-training certificate, one must be a graduate of a soils curriculum approved by the board and pass an examination in the fundamentals of soil classification. 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." That's for the classifier in training.

If an individual wants to be a soil classifier but 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."

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.

So, you can see why the interim committee was a bit perplexed.

The first thing that the interim committee did was to eliminate the soil classifier in training level.

Returning to page 4 of the bill you will see the steps for registration beginning on line 19.

1. Get and file an application.
2. Provide the names of three references, one of whom must be an individual registered with the board and must have personal knowledge of the applicant's activities.
3. Submit a transcript indicating that:

- **a. One has a baccalaureate or graduate degree, in a science - related field, from an accredited institution of higher education; and**
- **b. That at least 15 of the credits constituting the degree come from the list of qualifying soil - related courses, as set forth in section 43 - 36.1 - 08 or have been otherwise approved by the board.**

A little bit ago, I had asked you to skip over one section of the board's duties. This is where it ties in. The proposed language directs the board to develop and make available on its website a list of each course, by name and number, that is:

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

b. Determined by the board to provide academic preparation appropriate to the classification of soils. (Page 3, Line 20-28)

Again, current law refers to a "curriculum approved by the board." The interim committee thought it would be appropriate to have the board actually publish what those courses or that curriculum might be, so that an individual contemplating entry into the profession would have due notice of the requirements.

Getting back to the application process, on the top of page 5, an applicant must submit evidence of having passed the fundamentals of soil science examination and the applicant must submit documentation of experience in or exposure to:

a. The identification of soils;

b. Soil surveys;

c. The preparation of reports pertaining to soil identification or soil surveys;

d. The identification of plant growth materials;

e. Land reclamation; or

g. Other similar activities deemed by the board to be related to the classification of soil.

Current law talks about having four years of experience or in some cases eight years of experience in soil classifying work of a character and grade which indicates to the board that the applicant is competent to practice soil classifying.

What current law does not do is define "*years*." This is North Dakota. Soil classification does not take place year round.

When the current law refers to a "year" of experience, does it mean six solid months in the field? Four solid months? Is one week-long job in the summer sufficient experience?

Because of these unanswerable questions, the interim committee took a different tack. It determined that one needed to have both an academic preparation and experience and that if one did not have *sufficient* experience, one would not be likely to pass the practical examination.
Page 5 of the bill also provides for an application fee that is set by the board but capped at $500. Current law sets the fee at between $50 and $200, but adds that if a national test is administered, the amount may not exceed five hundred dollars.

Once one is registered there is an annual registration fee set by the board but capped at $300. That is the current level.

Toward the bottom of page 5, beginning on line 20, the bill draft adds such practical features as telling the board to publish on its website the date, time, and location of the fundamentals exam and the date and time of the practical exam. Because the practical exam is given in the field, the location is not included.

The board is directed to offer the practical exam at least once per year.

If, for whatever reason, an individual chose not to wait for the next exam cycle, the individual could ask for an off-calendar administration and if the board agreed, the board could charge an extra fee for this accommodation.

At the bottom of page 5 - line 29 - The passing grade is 70 %. If an individual fails to receive 70%, the individual can continue to retake the examination until successful.

In the middle of page 6, beginning on line 10, you will see that certificates of registration expire on December 31st of each year.

The board is directed to notify soil classifiers by December 1st that their registration fees are due. If per chance one does not pay by year's end, one is subject to a $25 late fee. That is found on page 6, lines 18-19.

At the bottom of page 6, beginning on line 28, the bill sets forth a simplified process for the consideration of complaints.
It allows anyone to file a complaint and unless the board deems it to be frivolous, there must be a hearing under 28-32, the state's administrative practices act.

Disciplinary action may include the suspension of one's license, the revocation of one's license, or the refusal to renew one's license. In order to get to that point, one must have:

- **Violated the chapter;**
- **Submitted false or misleading information in connection with one's application;**
- **Be found guilty of gross negligence, incompetence, or misconduct, in the practice of soil classification; or**
- **Violated the code of ethics adopted by the board.**

In the middle of page 7, you will see the section on exemptions.

The first exemption, on line 11, is a cleaned up wording of the current law. It provides that the chapter does not apply to an employee or a subordinate of a registered soil classifier, provided the work and any determinations are deemed to be those of the soil classifier.

The second exemption begins on line 14.
This is what the current law provides:

> **"The practice of soil classifying by any person regularly employed to perform soil classifying services solely for that person's employer or for a subsidiary or affiliated corporation or limited liability company of that person's employer, providing the soil classifying performed is in connection with the property, products, or services of that person's employer."**

After hearing from several state agencies and representatives of the private sector, the interim committee tried to clarify the language and the Senate Agriculture Committee made some changes as well.

As the bill is before you, the second exemption provides that this chapter does not apply to an individual identifying hydric soils for purposes of wetland delineation, provided:

1. That individual is employed by this state;
2. The identification of hydric soils for purposes of wetland delineation occurs in the normal course of that individual's employment; and
3. The individual has completed a course in wetland delineation.

Likewise, the chapter does not apply to an individual identifying hydric soils for purposes of wetland delineation, provided:

1. That individual is employed by a for profit entity;
2. The identification of hydric soils for purposes of wetland delineation occurs in the normal course of that individual's employment;
3. The individual is deemed qualified to conduct wetland delineation by the regulatory agency for which the wetland delineation is to be performed;
4. The individual's employer takes legal responsibility for the work and determination of the individual; and
5. The individual has completed a course in wetland delineation.

The referenced course is one that consists of at least 40 hours and provides the student with a basic understanding regarding the interaction of vegetation, soils, and hydrology in wetlands and provides the student with the background necessary to identify wetlands and determine their boundaries.

The bill does carry a penalty for its violation. The penalty is a class B misdemeanor, which is 30 days or $1500.

On Page 8, line 8, you will see that the current soil classifiers chapter is being repealed. This bill creates a new chapter. Sometimes, when we do the chapter rewrites, it's a lot easier not having to work within the constrictions of an existing chapter. We are better able to reorder concepts and if we are literally amending out everything except a section number, we might just as well start from scratch.

The final section of the bill directs the board of soil classifiers, in conjunction with the director of the school of natural resource sciences at NDSU to review advances in the field of soil classification, as well as anticipated changes in the manner of classifying soils, with a view to determining the feasibility and desirability of requiring continuing education as a condition of registration renewal for soil classifiers.

The board is to present its conclusions and recommendations to the legislative management.

Right now, there is no statutory requirement for continuing education in this field. The practice of soil classification is, like most other fields, being impacted by new discoveries and technologies, and there is a desire to ensure that those who practice are current. What those requirements would look like, how they would be delivered, administered, and paid for are all questions that the board and NDSU are being asked to address - together.

3/12/15 #2a

SB2026

Chairman Johnson and Members of the House Agriculture Committee, I am Representative Marvin Nelson of District 9.

I am speaking today in favor of SB2026 but believe it should be amended.

I will speak towards the delineation of wetlands.

Fundamentally, doing soil survey work and the identification, determination, and delineation of wetlands for regulatory agencies are two distinct things.

The first part that needs to be addressed is on page two, line 4. I believe that should be deleted.

d. The identification of plant growth material; and

There is nothing about a soils degree that qualifies soil classifiers to have the exclusive ability to identify plant growth material. Botanists, horticulturalists, range scientists all have education that more directly speaks to this than soil scientists do.

I don't believe the national accreditation under ARCPACS requires the identification of plant growth material. I searched on the Soil Science Society of America's website for certified soil classifiers and found only three for North Dakota, some may be under Minnesota or could be registered as the more general soil scientist, in any case, we don't have many nationally certified soil classifiers. It seems somewhat strange that our state certification doesn't seem aligned with the national.

Wetlands determinations.

When doing a wetlands determination for NRCS, there are three circumstantial bits of evidence one uses, wetland hydrology, hydrophitic vegetation and hydric soils. In many cases, most really, the hydrology is used remotely. One takes from 5 to 10 "typical" years and looks to see if an area holds water. If it does most of

the time it is considered a wetland if it doesn't it's not and it's in the in between area that one uses the soil and the plant materials.

It is very possible to have a hydric soil which is not an NRCS jurisdictional wetland and vice versa.

In addition, when making a determination of hydric soils, one doesn't have to classify it, but more simply to recognize that it is a hydric soil. Some of our soils can be rather difficult in this respect. Like some of our strongly basic soils that develop in discharge areas inhibit the redox bodies that are normally seen in a hydric soil.

In any case, while it is a skill that takes training from a multitude of disciplines, it does not take years and years of experience to do well, and so I speak in favor of the exemptions area of the bill. I would actually argue that it is basically unnecessary since wetland determinations are not soil surveys but recognize the need for direction by the legislature.

I would point out that some seem to be seeing the exemptions as allowing engineers to do whatever, whenever. That is not the case, it is rather specific that the determinations need to be for a regulatory agency. That would be the NRCS or the Army Corps of Engineers or the USFWS or EPA. Note that what is a wetland under one agency is not necessarily a wetland under the others. There is no single way to determine a wetland and each agency uses a somewhat different identification system.

Rep. Marvin Nelson #26
SB 2026
3/12/15

NATURAL RESOURCES CONSERVATION SERVICE (NRCS) MAPPING CONVENTIONS FOR DETERMINING WETLANDS AND POTENTIAL WETLANDS IN SOUTH DAKOTA AND NORTH DAKOTA

For the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996.

We, the undersigned, hereby adopt this document as the technical basis for the identification of wetlands and potential wetlands by the NRCS.

South Dakota Natural Resources Conservation Service	Date
North Dakota Natural Resources Conservation Service	Date
South Dakota United States Fish and Wildlife Service	Date
North Dakota United States Fish and Wildlife Service	Date

Draft for Federal Register Public Review Posted to Website on February 3, 2011

INTRODUCTION

The intent of this document is to outline the procedure that the Natural Resources Conservation Service (NRCS) could use to identify wetlands when adequate information currently exists for a site(s) and will use to identify potential wetlands when additional field information is necessary for portions and/or all of the project area. These mapping conventions are separate from, but must be used in conjunction with, the National Food Security Act Manual (NFSAM) and the approved onsite procedures document(s). The approved onsite procedures document(s) are based on the most current versions of the NFSAM, the 1987 United States Army Corps of Engineers (USACE) Wetland Delineation Manual, Technical Report Y-87-1 ('87 Manual), and/or USACE Regional Supplements.

The mapping convention signatory agencies have reached consensus on the mapping convention procedure. These mapping conventions take into account the regional, state, and local wetland characteristics unique to North Dakota (ND) and South Dakota (SD). This document adheres to regulations and policies in effect as of the date of this document but may be subject to change. If changes are proposed to the mapping conventions the changes must first receive the concurrence of the signatory agencies before their adoption by the SD and ND NRCS. If such modifications are necessitated by a change in statute, regulation, and/or national policy the signatory agencies will review the external changes and concur on any needed changes to the mapping convention procedure necessary to bring the procedure in line with statute, regulation, and/or national policy.

Persons identifying potential wetlands and conducting wetland determinations must have the appropriate "Wetland Job Approval Authority(s)" delegated and documented in accordance with current NRCS policy (Section III of the state Technical Guide). The NRCS decision-maker is reminded that size of an area is not part of the wetland criteria therefore, areas large enough to display evidence of potential wetlands on inventory tools and/or that are noted in the field will be considered.

There are two unique and distinct decisions required of the NRCS wetland decision-makers. First, a decision must be rendered regarding the presence or absence of a wetland. Second, a decision must be rendered regarding the appropriate NFSAM wetland label, based on the eligibility of the site to exemptions provided in the 1985 Food Security Act (the "Act"), as amended, and the Code of Federal Regulations (CFR). Exemptions can be full (i.e., Non-Wetland, Prior Converted Cropland, Artificial Wetland) or with conditions (i.e., Farmed Wetland, Farmed Wetland Pasture). Refer to the CFR and the NFSAM for specific definitions.

PROCEDURE

The following section outlines the steps the SD and ND NRCS will use to determine if adequate information currently exists for a site(s) and when onsite inspection may be necessary for a site(s). Identified sites are called "potential wetlands" in this procedure until the user determines if an on-site inspection is necessary (e.g. identifies if adequate information is not currently available for the site or if the site meets any of the conditions in Step 4. *If adequate information is currently available then "potential wetlands" will either be wetland or nonwetland (see step 4).*

Step 1: Preplanning and Remote Sensing
Step 2: Selection of the Determination Method
Step 3: Determine if Normal Circumstances Exists
Step 4: Determining if Adequate Information Exists
Step 5: Determine the Predominance of Hydric Soils
Step 6: Determination of the Prevalence of Hydrophytic Vegetation
Step 7: Determination of Wetland Hydrology
Step 8: Making a Wetland Determination
Step 9: Wetland Delineation

Step 1: Preplanning and Remote Sensing

To complete this step, the reviewer may choose to begin with one or more resources noted below to maximize the information on the location of potential wetlands. The NRCS policy, manual, and regulations do not limit the resources used.

ACTION:

A. Review the soil survey and the state Technical Guide county hydric soils list to identify areas that may be potential wetlands. Identify listed hydric soil map units, map units with hydric soils as part of their name, or soils with hydric inclusions, and map units with conventional wetland symbols as evidence of potential wetlands.

B. Review the NRCS wetland inventory maps and official determinations, if available, to identify previously mapped wetlands as evidence of a potential wetland.

C. Review the National Wetland Inventory (NWI) maps to identify previously mapped wetlands as evidence of potential wetlands.

D. Based on knowledge of local conditions, review the appropriate Farm Service Agency (FSA) slide or slides selected from all available slides (regardless of annual precipitation), to identify evidence of potential wetlands. Any of the following signatures present on one or more slides would be considered as evidence of potential wetlands:
   - Hydrophytic vegetation
   - Surface water
   - Saturated conditions
   - Flooded or drowned-out crops
   - Stressed crops due to wetness
   - Differences in vegetation due to different planting dates
   - Inclusion of wet areas as set-aside or idled
   - Circular or irregular areas of unharvested crops within a harvested field
   - Isolated areas that are not farmed with the rest of the field
   - Areas of greener vegetation (especially during dry years)

E. Review all other inventory tools (where available) for evidence of potential wetlands.

F. Review the United States Geological Survey (USGS) NED 1/9 Arc Second LIDAR data if available for your county. This data provides 0.5-, 1-, 5-foot contours that may assist delineators in identifying manipulations and potential wetland geomorphic position.

➢ Proceed to the next step.

Step 2: Selection of the Determination Method

ACTION: Choose either Option A or Option B.

➢ Option A – Conduct onsite determination with offsite tool review.
   - Identify potential wetlands from Step 1 then review 1986 and prior year aerial photography and existing case file scope and effect documentation to determine if any manipulation occurred prior to December 23, 1985. Document findings and proceed to Step 5.

➢ Option B – Potentially conduct offsite determination. Proceed to Step 3.

Step 3: Determine if *Normal Circumstances Exist*

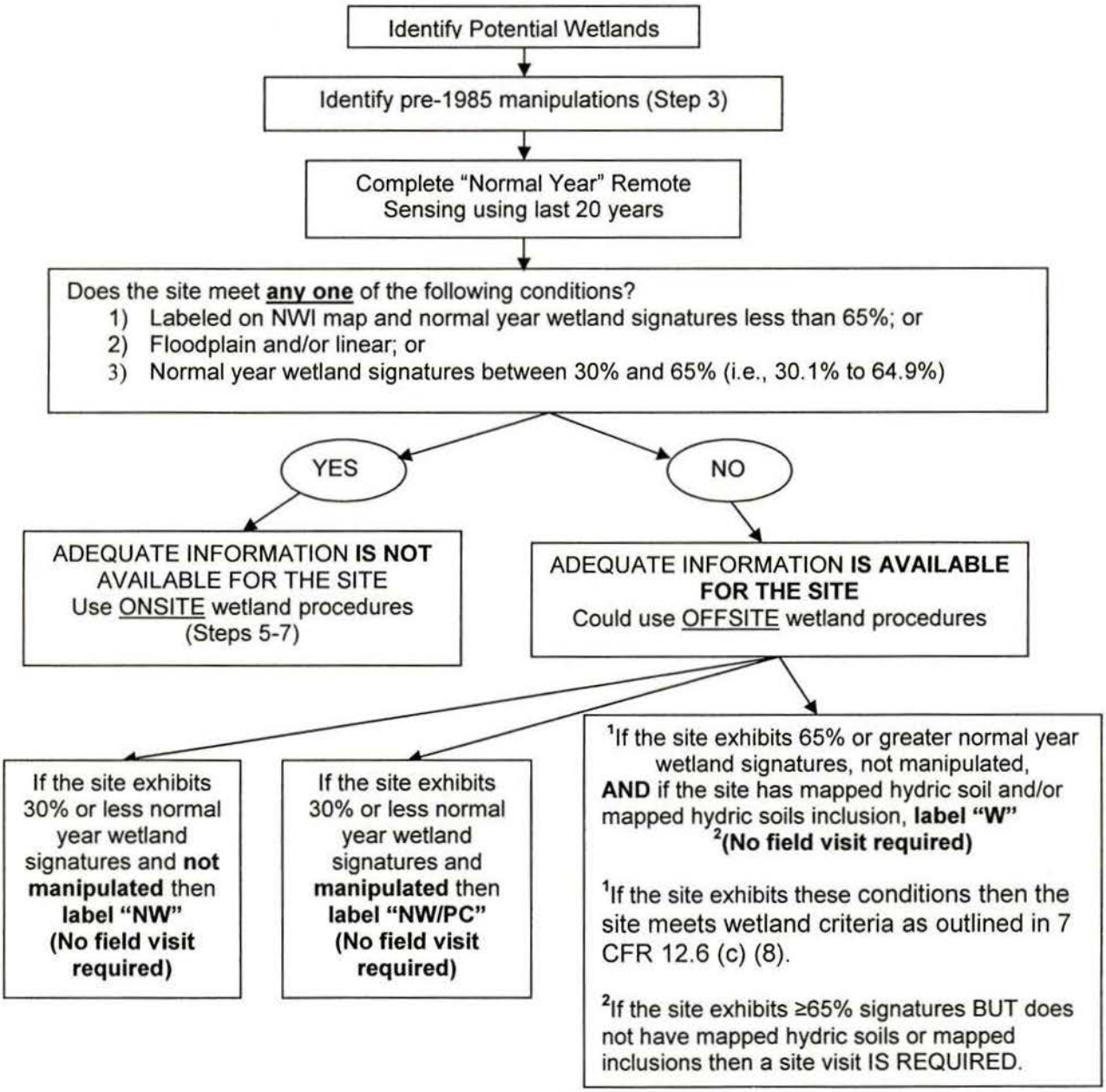
ACTION: Review the 1986 and prior year slides to determine if any manipulation occurred prior to December 23, 1985. Review existing case file scope and effect documentation.

- If *normal circumstances* remain, then proceed to Step 4.
- If the site has been disturbed such that *normal circumstances* do not exist, then you must go onsite. A comparison reference site may be used. The use of a reference site can be made in the field either after or during the site visit. Proceed to Step 5.

Step 4: Determining if Adequate Information Exists

ACTION: Determine if the site is a pothole or playa, follow the flow chart below and document the findings. A site field visit **is not** required if the site **meets the "offsite"** conditions; however, a site field visit is always an **option** to the wetland delineator. A field visit **is** required for any sites that are **appealed** or if a site **does not meet "offsite"** conditions.

- If all sites are determined to have adequate information and meet the offsite conditions then proceed to Step 8, otherwise proceed to Step 5 for potential wetlands not meeting offsite conditions.



Step 5: Determine the Predominance of Hydric Soils

ACTION: Refer to the approved onsite procedures document(s).

- If the site meets the hydric soils requirements, then document the findings (per form instructions). Proceed to Step 6.
- If the site fails to meet the hydric soil requirements, the area is not a wetland. No further investigation is required. Document the findings (per form instructions). Proceed to Step 8.

Step 6: Determination of the Prevalence of Hydrophytic Vegetation

ACTION: Refer to the approved onsite procedures document(s).

- If the site meets the hydrophytic vegetation requirement, then the vegetation is hydrophytic. Document the findings (per form instructions) and proceed to Step 7.
- If the site fails all of the hydrophytic vegetation tests, then hydrophytic vegetation is absent. Document the findings (per form instructions). Proceed to the Step 8.

Step 7: Determination of Wetland Hydrology

ACTION: Refer to the approved onsite procedures document(s).

- If the site meets the wetland hydrology requirements, then document the findings (per form instructions) and proceed to the Step 8.
- If the site fails the wetland hydrology requirements, then wetland hydrology is absent. Document the findings (per form instructions). Proceed to Step 8.

Step 8: Making a Wetland Determination

ACTION: Sites determined to be a wetland will be assigned the appropriate wetland label as determined by any applicable exemptions found in the current version of the NFSAM.

- Additional analysis (i.e., duration of ponding or saturation, cropping history, if production is possible) might be required to determine the appropriate label. Refer to 7 CFR, Part 12; Section 12.5 (b), *Wetland Exemptions,* and Parts 514.10 through 514.60 of the NFSAM (current edition), for further guidance assigning FSA wetland labels.
- Verify and document the scope and effect for all manipulated sites.
- If the site is a potential converted wetland then also conduct a minimal effect analysis prior to labeling the site CW or CW + year.
- Proceed to next Action or to Step 9.

The following two Step 8 actions apply only to SD NRCS.

ACTION: Large rangeland tracts, or portions thereof, that are not inventoried (NI) for potential wetlands will be outlined and labeled with an "NI." Proceed to next Action.

ACTION: Determine if indicators of potential waters of the United States (U.S.) exist on your determination area. The indicators of potential waters of the U.S. are:

- Open water, dry lake/pond beds, or mud flats on photos.
- Drainage patterns evident on available inventory tools.
- Blue lines or similar designations on USGS topographic maps and other maps.
- Features on maps labeled as stream, lake, river, creek, gulch, arroyo, etc.

- Potential waters of the U.S. should be labeled "NI." Verify in the field if the NI channel has adjacent associated wetlands and map accordingly (e.g., NI/W, NI/PC).
- Proceed to Step 9.

Step 9: Wetland Delineation

ACTION: Refer to the procedures found in the NFSAM and approved onsite procedures document(s) to complete the wetland map and Highly Erodible Land and Wetland Conservation Determination (NRCS-CPA-026E).

#3

Engrossed Senate Bill No. 2026

Testimony of Grady Wolf, KLJ

March 12, 2015

My name is Grady Wolf. I am the Production Manager for the Environmental Practice Area for KLJ and am located in Bismarck, ND. I have been with KLJ for approximately nine years. Prior to my employment with KLJ, I was briefly employed by the ND State Health Department completing Stormwater Compliance and before that worked for the Emmons County Water Resource and Soil Conservation Districts as a Watershed Coordinator for Beaver Creek Watershed which includes approximately 650,000 acres. My watershed position was housed out of the local Natural Resources Conservation Service office in Linton and required me to work on conservation efforts with agricultural producers using funding distributed by the Environmental Protection Agency as well as Natural Resources Conservation Service/Farm Service Agency farm programs.

In North Dakota and the surrounding states, (MN, SD, MT, WY) the United States Army Corps of Engineers administers Section 404 (wetlands) of the 1972 Clean Water Act for the Environmental Protection Agency. The widely accepted approach for delineating wetlands is clearly defined in the 1987 United States Army Corps of Engineers Wetland Delineation Manual and 2010 Regional Supplements to the Manual. Wetland delineation consists of three separate and distinct parameters to be analyzed. The three parameters consist of the presence of hydrophytic vegetation, hydrology and hydric soils. Under normal circumstances, all three of these parameters must meet the criteria outlined in the 1987 Manual and Regional Supplements to be considered a wetland. I won't go into all the intricacies of delineation of wetlands if one of more of the parameters are not present and the site is believed to be a wetland, but will reiterate that the methods for wetland delineation are defined in the 1987 Manual and 2010 Regional Supplements. I will note however, that there is specific guidance in the manual that does allow for the assumption of hydric soils to be present, without analysis, if other parameters are met; therefore eliminating the need to identify the presence of hydric soils to determine wetland presence.

KLJ has completed thousands of wetland delineations in North Dakota and surrounding states over the last 15 or more years. All of our employees who complete wetland delineations have bachelor's degrees in a science based curriculum. In addition, all staff have attended a 40 + hour wetland delineation course taught by an accredited institution or instructor and go through an extensive mentoring process before being allowed to delineate wetlands on their own. In addition, we have two employees who are Certified Wetland Delineators in Minnesota. There are no other surrounding states that require the use of

professional soil classifiers to delineate hydric soils for wetland delineation purposes. KLJ has completed wetland delineations found to be acceptable for many federal agencies including the United States Army Corps of Engineers, Fish and Wildlife Service, Bureau of Land Management, Forest Service, Federal Railroad, Rural Utility Service and many more federal, state, tribal and local regulatory agencies/boards.

In closing, I would like to reiterate the act of wetland delineation requires a three parameter approach, (hydrophytic vegetation, hydrology and hydric soils) all of which are clearly defined in the 1987 Manual and Regional Supplements. KLJ believes that the determination of hydric soils for wetland delineation purposes as defined by the 1987 Manual and 2010 Regional Supplements, does not fall within the description of Soil Classification as currently defined in the North Dakota Century Code. With this testimony I ask that you pass the bill as currently proposed.

Thanks for your kind attention.

#4

HOUSE AGRICULTURE COMMITTEE
March 12, 2015 - 9:00 A.M.
Peace Garden Room

North Dakota Department of Transportation
Matt Linneman, Program Manager - Environmental & Transportation Services
Senate Bill 2026

Mr. Chairman and members of the Committee – I am Matt Linneman, Program Manager in the Environmental & Transportation Services Division at the North Dakota Department of Transportation (DOT). Thank you for giving me the opportunity to support SB 2026 today.

The current professional soil classifiers law (NDCC 43-36-24.4) exempts the use of classifiers for soil classifying performed in connection with the property, products or services of that person's employer. In accordance with the exemption, DOT does not require professional soil classifiers for wetland delineations completed by department staff.

Senate Bill 2026 (section 43.36.1-23) clarifies that exemption allowing state employees, trained in wetland delineations, to complete wetland delineations for DOT projects including potential mitigation sites.

The department had an opportunity to testify on a number of occasions in front of the Interim Committee on Agriculture and input from that testimony has been incorporated into the current version of the bill.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

#5a

Senate ~~House~~ Bill 2026

Presented by: Lawrence Edland, **Registered Soil Classifier, Edland's Soil Consulting**

Before: **House Agriculture Committee**

The Honorable Dennis Johnson, Chairman

Date: **March 12th, 2015**

Chairman Johnson, Vice-Chairman Trottier, members of the House Agriculture Committee, my name is Lawrence Edland. I am a registered soil classifier and a member of the Professional Soil Classifiers Association of North Dakota. I am the sole-proprietor of Edland's Soil Consulting, providing soil interpretations for: waste site disposal areas, coal mine reclamation, septic system sites as well as hydric soil determinations.

North Dakota has registered soil classifiers since the 1973 legislative session. The law was enacted as a means to recognize professionals and established criteria for individuals evaluating the soil resources of the State. This was particularly important at the time because of the need for reclamation after the onset of extensive surface coal mining. Since that time, soil classifiers have been instrumental in these and many more activities, including identification of hydric soils. As the oil activity continues in the state, we do not know the soils related issues that may surface. It may be that we will become involved in salt spills and pipeline reclamation. Ultimately, it is important that the state have a well thought out Soil Classifiers bill that will continue to serve the people and the resource.

The soil classifiers law is similar to the professional engineering's statute in that it requires a number of years of experience and a thorough testing program to become registered. Soil Classifiers in the state are regulated by a board of five individuals-- all appointed by the governor. Over the past 40-plus years, soil classifiers have been successful in helping to protect one of North Dakota's most valuable natural resources -- the soil.

The soil classifiers statute has been largely unchanged since its passage in 1973. Over the last couple of years, the Board of Registration and legislative council has initiated a process to update the language of the law. A number of soil classifiers and other professionals have provided testimony on the proposed versions of the bill during the interim legislative committee hearings. There were some changes made during the 2015 Senate session that the association supports. **Other changes, the association cannot support.** We feel some changes do not go far enough to protect both the citizens of North Dakota and the state's soil resource.

The main issue is with the exemption clause in the law (43-36.1-23.2b). As it is presently written, individuals would not have to be registered soil classifiers to identify and delineate hydric soils. This will impact how wetland delineations are conducted in the state and most likely result in areas that are not wetlands being identified as wetlands. This will **negatively** impact producers in the state. Furthermore this exemption will:

1. Increase the number and size of wetlands for agriculture producers, including areas outside the wetland boundary and areas where hydrophytic vegetation occurs but the soils are not hydric.
2. Increases the acreage needed for mitigation at a cost to agriculture producers, land developers and the state.
3. Take authority away from the state in determining how wetland delineations are made and, in some cases, give it to federal agencies.

As an example of these concerns: I was in the field working on a wetland delineation project last summer with a biologist from another company. This individual routinely does hydric soil determinations but is not a registered soil classifier. We were in a swale area that he thought should be considered a wetland since the vegetation was dominated with a wetland species. There was also water flowing down the swale from recent heavy rains. However, I pointed out there were no hydric soil indicators and the landscape was an upland swale. The vegetation on this landscape was reacting to the salinity in the soil and not the wetness. If this individual had been working on his own, the area would have mistakenly been delineated as a wetland and the total acres needing mitigation would have increased.

In addition to removing the hydric soil exemption, the association recommends the following amendments to bill 2026:

1. The association recommends that **"hydric soil determinations"** and **"septic sitings"** be placed back into section 43-36.1-13.5.

These items were added by the legislative council during the interim session to clarify what experiences would satisfy requirements for becoming registered. Both of these items are valid examples of work experience for a soil classifier. We are not sure of the reason for their removal, but they should be added back.

2. 43-36.1-23.2.b.3 replace **wetland delineation** with **hydric soil determination**.

The law should be specific to the qualifications of soil classifiers. Wetland delineation is multidiscipline while hydric soil determination is strictly related to soil classification. As it is presently written, the law implies that soil classifiers are qualified to collect hydrophytic vegetation.

3. 43-36.1-23.3.b.3 change to "consists of at least 40 hours of **training in hydric soil determination ..."**

The Senate version of the law requires a basic wetland determination course of 40 hours. Of these 40 hours only 6 to 8 hours are spent on hydric soils, sometimes never going to the field. The association **feels strongly** this does not provide the amount of training and experience

needed to preform hydric soil determinations—especially in cultivated areas or with problem soils.

4. Section 5. After the word **"Continuing"** delete the remainder of the line and insert in lieu of **"Professional Education-Rules"**. The board shall adopt rules to establish continuing education requirements for professional soil classifiers. Compliance with these rules must be documented at the times and manner prescribed by the board.

In discussion with legislative council and during the interim session committee hearings, continuing education was discussed and the (board and association) thought it would have been included in this bill. **It should** be included in this bill.

I would also like to address some of the comments made on the floor of the Senate when this bill was discussed that were not accurate or favorable to Professional Soil Classifiers.

1. There was a question in the Senate discussion about how many registered soil classifiers were in the state and how many worked for the NRCS. The answer given was inaccurate. Currently there are 25 registered soil classifiers, of those, 16 are actively practicing. Additionally, there are 5 individuals in the process of becoming registered.

   There never has been a need for a large number of soil classifiers. Even with the recent increase in demand, there has not been, to my knowledge, any work not completed due to lack of soil classifiers.

   We occupy an important but small niche. I can guarantee that if the law is passed with its present exemption for hydric soils, there will be considerably fewer individuals trying to become registered in the future.

2. It was stated on the Senate floor that it took up to 12 years to become registered. This is **not** true. If you have a degree in Soil Science or something similar, you can become registered after obtaining 4 years of experience and passing the practical examination. **Many individuals with working experience have become registered in less than a year.**

3. It was stated in the Senate the that classifiers' main concern with changes in the law related to the time required to become registered. This is **not** the case. As discussed earlier, the main concern is with the **exemption of hydric soils from the law**.

4. There was a question in the Senate as to whether this bill would weaken the Soil Classifier's law. The answer given was that it would not. However, the Professional Soil Classifier's Association **certainly** believes that it will. As written, the law allows a single course in wetland delineation that may **only include 6 to 8 hours of hydric soil training. This training time usually does includes time in the field but does not require taking or**

passing an examination. This amount of training and lack of testing **is not** adequate to know if these individuals understand the complexity of wetland soils.

5. It was discussed on the senate floor that the Senate Agricultural Committee was only codifying what companies are presently doing. If this is true, should the law be changed to accommodate them, or should they be following the law? This **is** not true of all companies. There **are** many companies and agencies that are following the letter of the law, including the DOT, NRCS and some engineering firms. If these changes are allowed, this law that has been beneficial to the state for over 4 decades, will be greatly weakened.

The Professional Soil Classifiers have provided testimony at four interim committee hearings and several Senate hearings. We have provided written documentation justifying our stand. However, it appears that our message has **not** been understood. Quite simply, **we feel that professionals should be required do hydric soil identification.** If the state allows unqualified individuals to do this work, they must be prepared for the negative consequences. We **urge** you to either **change** this bill or **do not pass this bill.**

Thank you.

#56

Senate Bill 2026

Presented by: Lawrence Edland, Registered Soil Classifier, Edland's Soil Consulting

Before: House Agriculture Committee

The Honorable Dennis Johnson, Chairman

Date: March 12 th, 2015

Mr. Chairman and committee members,
My name is Lawrence Edland. I am a registered soil classifier and a member of the Professional Soil Classifiers Association of North Dakota. I have provided you written testimony that outlines a short history of Professional Soil Classifiers in the state and details our stand on Bill 2026.

I would like to make it clear; the **Professional Soil Classifiers do not support this bill** as written. In fact, we recommend a **"do not pass"**, if it is not modified. The Professional Soil Classifiers initiated the process in the spring of 2012 to update some of its outdated language in the law and modify some of the constraints in getting qualified individuals registered in a timely manner. Since that time, language has been added that we do not agree with and do not support.

The main issue is with the exemption clause in the law (43-36.1-23.2b). As it is presently written, individuals would not have to be registered soil classifiers to identify and delineate hydric soils. This will impact how wetland delineations are conducted in the state and most likely result in areas that are not wetlands being identified as wetlands. This will **negatively** impact producers in the state. Furthermore this exemption will:

1. **Increase the number and size of wetlands for agriculture producers. Including areas outside the wetland boundary and areas where hydrophytic vegetation occurs but the soils are not hydric.**
2. **Increase the acreage needed for mitigation at a cost to agriculture producers, land developers and the state.**
3. **Take authority away from the state in determining how wetland delineations are made and, in some cases, give it to federal agencies.**

As an example of these concerns: I was in the field working on a wetland delineation project last summer with a biologist from another company. This individual routinely does hydric soil determinations but is not a registered soil classifier. We were in a swale area that he thought should be considered a wetland since the vegetation was dominated with a wetland species. There was also water flowing down the swale from recent heavy rains. However, I pointed out that there were no hydric soil

indicators and the landscape was an upland swale. The vegetation on this landscape was reacting to the salinity in the soil and not the wetness. If this individual had been working on his own, the area would have mistakenly been delineated as a wetland and the total acres needing mitigation would have increased.

There are some additional issues with how the law is presently written that I discussed in my written testimony. Please review these issues. They will cause problems in administering the law if they are not changed.

However, in my remaining time, I would like to address some of the comments made on the floor of the Senate when this bill was discussed that were **not accurate** or favorable to Professional Soil Classifiers.

1. There was a question in the Senate discussion about how many registered soil classifiers were in the state and how many worked for the NRCS. The answer given was inaccurate. Currently there are 25 registered soil classifiers, of those, 16 are actively practicing. Additionally, there are 5 individuals in the process of becoming registered.

   There never has been a need for a large number of soil classifiers. Even with the recent increase in demand, there has not been, to my knowledge, any work not completed due to lack of soil classifiers.

   We occupy an important but small niche. I can guarantee that if the law is passed with its present exemption for hydric soils, there will be considerably fewer individuals trying to become registered in the future.

2. It was stated on the Senate floor that it took up to 12 years to become registered. This is **not** true. If you have a degree in Soil Science or something similar, you can become registered after obtaining 4 years of experience and passing the practical examination. **Many individuals with working experience have become registered in less than a year.**

3. It was stated in the Senate that the classifiers' main concern with changes in the law related to the time required to become registered. This is **not** the case. As discussed earlier, the main concern is with the **exemption of hydric soils from the law**.

4. There was a question in the Senate as to whether this bill would weaken the Soil Classifier's law. The answer given was that it would not. However, the Professional Soil Classifier's Association **certainly** believes that it **will.** As written, the law allows a single course in wetland delineation that may **only include 6 to 8 hours of hydric soil training. This training time usually includes time in the field, but does not require taking or**

passing an examination. This amount of training and lack of testing **is not** adequate to know if these individuals understand the complexity of wetland soils.

5. It was discussed on the senate floor that the Senate Agricultural Committee was only codifying what companies are presently doing. If this is true, should the law be changed to accommodate them or should they be following the law? This **is** not true of all companies. There **are** many companies and agencies that are following the letter of the law, including the DOT, NRCS and **some** engineering firms. If these changes are allowed, this law that has been beneficial to the state for over 4 decades, will be greatly weakened.

The Professional Soil Classifiers have provided testimony at four interim committee hearings and several Senate hearings. We have provided written documentation justifying our stand. However, it appears that our message has **not** been understood. Quite simply, **we feel that professionals should be required do hydric soil identification.** If the state allows unqualified individuals to do this work, they must be prepared for the negative consequences. We **urge** you to either **change** this bill or **do not pass this bill.**

Thank you.

Lawrence E. Edland

Mandan, North Dakota

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Lawrence Edland #5C
SB 2026 3/12/15

I am addressing the stated concern of the SSSA. The ND exam is reliable and subjective. I'm not sure why the practical exam would not be reliable. Whether or not the practical examination is subjective, I can only speak to the field portion of the exam in which I have been involved. The field portion is subjective and needs to be. When describing the soil profile in which the horizon is five and a half inches thick, one classifier may describe it as being 5 inches thick while another may see it as being 6 inches thick. One could correctly combine two Bw horizons that are similar in characteristics while another could separate the same horizon into two horizons. Describing soils in the field is not an exact science and when grading the field exam, one needs to be subjective to be fair.

The difference between soil classifiers and soil scientist was discussed extensively during the interim sessions. The easiest way to explain the difference is that soil classifiers focus on the relationship between the soil and the landscape and then provide interpretations for those soils described on a specific landforms. Without being able to relate landscapes to soils, we would not be able to provide the high intensity soil surveys for reclamation, required by the PSC and HD. A soil scientist uses the information collected by the soil classifier and is able to provide interpretation for those soils. A classifier does both, and is the reason that back in 1973 when the law was first written, the law referred to soil classifiers rather than soil scientist.

The reason ND continues to require a practical exam taken within the state is to make certain the individual doing the work can provide accurate information related to the soils of ND. Lawyers are required to take an examination when moving between states because laws are different. Engineers the same. North Dakota soils are different and varied from those other regions of the country, and knowledge of those soils should exist before soil interpretations are made.

Comments related to suggested changes to the bill.

Soil classifiers may not do the actual analysis of the soil, but certainly do analyze the results, and this should be left in the bill.

Comments regarding education requirements are more clearly written in the proposed legislation than in the old code. Additional requirement information and acceptable classes would be outlined in the administrative rules.

In order to become certified with the SSSA the individual is required to have 5 years of experience. During the interim session and senate hearing, all time related to experience has been removed, and examination can be taken immediately after passing the fundamental examination. Including the word soil scientist in the language of the bill would create problems for companies hiring staff as soil scientists that do not meet these education requirements. We do agree that no one should be referred to as a soil scientist without this educational background, however.

The last comment I refer to, suggests that exemptions referring to wetland delineation does not connect to the definition at the beginning of the bill. I agree. Legislative counsel, at the April interim committee hearing, recommended that only one exemption be left in the bill. That exemption is on page 7, line 11, 1, as indicated by the SSSA comment. In this same comment SSSA indicates that some state legislatures consider wetland delineation as being outside the practice of soil science. I agree to this as well, certain segments of wetland delineation are outside the practice of soil science, and in my written testimony I indicate just that. Some soil classifiers may not be qualified to do hydrophytic vegetation or hydrology. These are three separate and different disciplines. That is why when NRCS sends their staff out to do wetland determination they send three individuals to exercise their specific expertise in vegetation, soils, and hydrology.

#6

3/12/15

House Agriculture Committee Hearing
Senate Bill 2026
Testimony presented by Rocky Bateman, New Salem, ND

Chairman Johnson and members of the House Ag Committee, my name is Rocky Bateman and I'm a member of the Board of Registration for Professional Soil Classifiers. I was appointed to serve on this board by the Governor and that obligates me to look out not only for this Board's best interests but also the interests of the state by protecting the precious and limited land resource of our state.

At this point, I am very concerned that the integrity of the legislative process has been compromised in the handling of SB 2026. Please let me explain.

This section of the Century Code was slated for a rewrite and update during the interim and I agree, it was time. We went through the process, finishing the rewrite in April of 2014. Our Board was satisfied with the rewrite and update that Legislative Council had done and were looking forward to submitting this to the interim committee this past fall for final approval. However, later in 2014 we learned that somebody else had been allowed in the back door, so to speak, of the Legislative Council by some unidentified legislator, and additional work had been done to the bill to exempt them from the oversight of the Professional Soil Classifiers board. Legislative Council belongs to the Legislature. From my own experience as a legislator, I know that the public does not have open access to the Legislative Council unless they have been given permission from a legislator. I would like to know, and Mr. Chairman and members of the committee, you need to find out who allowed this to happen when the Board, in good faith, worked hard to develop a good rewrite and was never brought into the loop on these additional changes. At this time, we only know who worked to write themselves out from under the jurisdiction of this board.

Furthermore, this bill was again amended on the Senate side to exclude another type of business from oversight of the Board and I view this as a total conflict of interest by a legislator.

This state has a history of doing what is right to protect the land. Look back at what we did with coal mine reclamation which is the best land reclamation program in the nation. Coal mine reclamation and protecting the land is what brought about this Board. Professional and highly trained soil classifiers are even more critical today to protect our land resources than they were back then considering the issues today surrounding land use and abuse in the oil patch. This board and the job they are responsible for is more relevant today than it ever has been. Preserving our land while we harvest its resources has been our priority and tradition. That's why registered soil classifiers are so important. They have been trained, tested and are qualified to do things to a much higher standard than almost all other states.

Chairman Johnson, members of the committee, I am in favor of updating this section of the code but if it can't be returned to its original form, the one it was in last April, I would most respectfully urge you to kill this bill. That would allow us to start over with no games being played.

Thank you.

#1

Senate Bill 2026
Testimony by Lance G. Loken, PSC
Before the North Dakota House Agriculture Committee
March 13, 2015

Good Morning Chairman Johnson and members of the House Agriculture Committee.

My name is Lance Loken. I am a Registered Professional Soil Classifier in North Dakota and a member of the Professional Soil Classifiers Association of North Dakota. I am President of Western Plains Consulting, Inc. (WPC), a North Dakota-based environmental and natural resources consulting firm. I am a North Dakotan by birth, grew up on a small grain and dairy farm in Benson County, and received a BS Degree in Geology and a MS in Soil Science, both from NDSU.

I would encourage you to review the testimony I gave in the Senate Agriculture Committee. I will try not to cover the same ground here today.

I want to speak specifically on the potential economic impacts this bill, in it's current format, may unintentionally cause. I will restrict my testimony to the hydric soil determination related to the overall wetland determinations referenced in the bill at this time.

Most people consider wetlands to be a nuisance and a hindrance, whether you are a farmer or rancher, developer, or any industry where corridors need to be assessed prior to development. These corridors may be roads, pipelines, or emergency outlets for example. Regardless of people's opinion, federal agencies may, and often do, have jurisdiction.

This may be the Food Security Act and the related Swampbuster provisions, the Federal Highway Administration's no-net-loss policy, the Federal Aviation Administration's no-net-loss policy, the Fish and Wildlife Services Wetland Easement Program, and the Corps of Engineers jurisdictional waters oversights, as examples. In many ways, a development being considered will more than likely have to address wetlands. Our firm, and other sole proprietorships and companies with Soil Classifiers on-staff have been a long running asset to address these issues. Soil Classifiers are a speciality field within the profession of Soil Science. The last time I checked, the Soil Science Society of America referenced roughly 11 specific disciplines within soil science. The Soil Classifiers fall under the Soil Genesis and the Wetland Soils disciplines.

This is not so different than engineers, where you find civil, industrial, chemical, mechanical, structural, geotechnical, and other specialities within the engineering world.

I can't speak to why exactly North Dakota only has a law dealing with Soil Classifiers, but as I understand the limited history I am aware of, this was originally a result of the surface coal mining activities in the early 1970s. Since then the North Dakota Plumbing Code has specified soil classifiers as an option for septic tank siting projects. The North Dakota Department of Health has required soil classifiers be involved in siting for landfills, and for decades soil classifiers have been utilized for hydric soil determinations as part of wetland delineation projects.

The risk, which in my opinion is great, in allowing this bill to proceed as currently written, will allow individuals with marginal to inadequate training to perform hydric soil determinations. There are

more and more stories surfacing of non-soil classifiers performing these soil determinations. Many people think this is just fine, and it can't be that tough.

Hydric soil determinations are often very difficult. It requires the ability to interpret the overall landscape around a wetland, to understand what type of reduction/oxidation feature (often called mottling) is present within in a soil, and to understand how the depth and frequency of these features determine whether a soil is "hydric" or not. You need to be able to determine the difference between contemporary versus relic mottling or redox features. You need to understand what soil colors in the overall matrix of a soil tell you, and at what depths their occurrence takes place, because this affects the decision on whether a soil is "hydric". You need to have the knowledge of whether you are in a closed basin or along an intermittent stream, and what differences and criteria are affected in making a hydric soil decision. And in these high water years we have experienced across much of the State since 1993, where the line should actually be placed.

Vegetation is often very intrusive and will respond quickly with rising or falling waters. Soils take decades to hundreds of years to change, and they provide evidence that has taken these decades to hundreds of years to form. This information is critical in determining where a wetland delineation should be placed.

This lack of understanding the genesis of soils will, and as we understand, has led to delineation of wetlands to larger sizes than they really are on the landscape. This can, will, and most likely already has ended up with "more" acres of wetlands being delineated, leading to additional permitting costs, avoidance issues, and expanded mitigation, when that is an option.

You can be sure most regulatory agencies will not challenge these delineations, because it will document "more" wetland acres. But this may lead to some developments not being built or the size of a development being scaled back, pipelines having to be moved or incur the excessive expense of horizontal drilling to go "under" delineated wetlands, and impacts to farmers with more wetland acres under jurisdiction by the USDA than necessary.

Soil classifiers have a unique skill set, and years of training and experience to support their decisions. We understand the criteria better than anyone regarding hydric soil determinations, and have influence over the size of a wetland delineation.

In summary, I ask you to remove the amendments attached, first presented at the October 2014 Interim Legislative Committee meeting, and further amended in the Senate, and utilize the amendments we have presented.

If you are confused by the opposing arguments in this bill, then I recommend a "Do Not Pass" recommendation, and setting up a study committee over the interim period, now on the horizon, to work out a bill that all parties can live with.

Thank you for your time today, and I am open to any questions you may have.