

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**AGRICULTURE COMMITTEE**

Monday, November 4, 2013  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Jim Schmidt, Bill Amerman, Tracy Boe, Dennis Johnson, Dwight Kiefert, Diane Larson, David S. Rust, Wayne Trottier, John Wall; Senators Bill L. Bowman, Robert Erbele, Larry Luick

**Members absent:** Representatives Chuck Damschen, Bob Hunskor; Senators Jim Dotzenrod, Joe Miller

**Others present:** See [Appendix A](#)

**BANK OF NORTH DAKOTA FARM LOAN PROGRAMS - UPDATE**

Chairman Schmidt welcomed the committee and distributed a brochure entitled *BND Farm Loan Programs* ([Appendix B](#)). He said the Bank of North Dakota (BND) beginning farmer loan program has a funding limit of \$500,000. He said the question is whether that is sufficient to allow an individual to get into agriculture. He said the BND had polled 63 banks. He said those banks indicated that \$500,000 was an appropriate level at this time. He said because commodity prices were in a bubble and land prices were in a bubble, the 63 banks felt that if there were an increase in land loans and the commodity prices dropped, young agricultural producers would be put in dire financial straits. He said while BND personnel thought the limit should have been \$700,000, they elected to keep the cap at \$500,000 because of what they were told by the banks. He said land that was selling not too long ago for \$1,200 to \$1,300 an acre is now over \$2,000 an acre. He said the limit is set by the BND. He said changes to the limit do not require legislation.

Representative Boe said the interest rate spread between local banks and Farm Credit Services makes this program almost worthless at this time. He said the program was designed to provide an interest rate buydown to young farmers. He said the current interest rates have negated the original purpose.

Chairman Schmidt said it might be of interest to the committee to have BND personnel provide additional information regarding the program at the next meeting.

Committee Counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

**AGRICULTURAL LAW REWRITE - GINSENG**

Committee Counsel presented a background memorandum entitled [Provisions of the North Dakota Century Code Which Relate to Agriculture - Background Memorandum](#).

Chairman Schmidt said the first bill draft [[15.0023.01000](#)] to be considered as part of the 2013-14 rewrite process pertains to ginseng.

At the request of Chairman Schmidt, Mr. Charles Elhard, Plant Protection Specialist, Department of Agriculture, provided testimony ([Appendix C](#)) regarding ginseng. He said due to overharvesting in the 1970s, ginseng is protected under the Convention on International Trade of Endangered Species. He said the United States Fish and Wildlife Service allows each state to regulate the harvest and trade of ginseng. He said there are currently two registered growers in the state and there has never been a registered dealer. He said North Dakota is required to provide an annual harvest report to the United States Fish and Wildlife Service. He said a harvest has never been reported.

In response to a question from Representative Schmidt, Mr. Elhard said ginseng is not indigenous to the state and is very difficult to establish in this climate. He said the program remains in place in case anyone ever has a harvest.

In response to a question from Senator Luick, Mr. Elhard said North Dakota State University is not conducting any research on ginseng.

Chairman Schmidt said the chapter was enacted in 1991. He said the state has other plants that come under the Endangered Species Act. He said he does not see why this particular plant needs to have its own chapter, especially because the plant is not indigenous to the state and there has never been a harvest reported in the past 13 years.

**It was moved by Representative Boe, seconded by Senator Bowman, and carried on a roll call vote that Legislative Council staff prepare a bill draft to repeal the chapter pertaining to ginseng and authorize the Agriculture Commissioner to provide, upon request, any documentation necessary for the sale and shipment of ginseng.** Representatives Schmidt, Amerman, Boe, Johnson, Kiefert, Larson, Rust, Trottier, and Wall and Senators Bowman, Erbele, and Luick voted "aye." No negative votes were cast.

Chairman Schmidt said the committee will have the opportunity to review the requested bill draft.

### **LIVESTOCK DISASTER ASSISTANCE - UPDATE**

With the permission of Chairman Schmidt, Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, distributed a press release ([Appendix D](#)) pertaining to the association's efforts to assist ranchers with storm-related livestock losses stemming from the blizzard on October 4-5, 2013. She said the storm began with rain, then turned to heavy wet snow with wind. She said livestock loss was in the tens of thousands in southwestern North Dakota and South Dakota.

Ms. Ellingson said the federal farm bill is being considered by a conference committee. She said the livestock disaster assistance programs are included in both the House and Senate versions of the legislation. She said the livestock indemnity program is one part of the disaster assistance programs. She said the livestock indemnity program would provide some base level support for producers. She said the program pays producers 65 to 75 percent of the market value of animals that were lost. She said the association is telling ranchers to keep thorough records in order to verify their losses and their inventories. She said it is also suggested that photos be taken and kept and that third parties be used for verification. She said when the programs are renewed, the ranchers will then be ready to apply for the assistance.

In response to a question from Representative Larson, Ms. Ellingson said, in the past, the livestock indemnity program has paid for catastrophic losses beyond an average mortality rate. She said the Farm Service Agency establishes a mortality rate for different classes of livestock. She said the value is a national average market value determined over the course of a year.

In response to a question from Senator Bowman, Ms. Ellingson said there are a variety of relief efforts springing up across the region. She said some people are actually donating animals to ranchers.

In response to a question from Representative Trottier, Ms. Ellingson said the storm was a stressor and there will be subsequent losses and impacts.

In response to a question from Representative Rust, Ms. Ellingson said there are not any commercially available insurance policies that address this kind of weather-related loss.

In response to a question from Representative Wall, Ms. Ellingson said early estimates by the Farm Service Agency indicate that there was about a 1,000 head loss in the seven North Dakota counties hardest hit by the storm. She said those numbers will be larger due to the subsequent loss.

In response to a question from Representative Schmidt, Ms. Ellingson said she does not believe that the charitable contributions accepted by ranchers will be held against them for purposes of determining federal disaster assistance.

Senator Bowman said the storm was terrible and the loss of electricity made it even that more challenging. He said the staff of the state's rural electric cooperatives need to be commended for everything they did to restore electricity to the residents.

### SOIL CLASSIFIERS

Committee Counsel presented a background memorandum entitled [Registration of Professional Soil Classifiers - Background Memorandum](#).

Chairman Schmidt said the committee will consider a bill draft [\[15.0010.01000\]](#) pertaining to the registration of professional soil classifiers. He said Mr. Lawrence Edland and Mr. Darrell VanderBusch will address the committee in their capacity as members of the State Board of Registration for Professional Soil Classifiers.

Committee Counsel said the first recommended change is to remove the definition of "board" as found in North Dakota Century Code Section 43-36-01. She said each section can be drafted so as to reflect its reference to the State Board of Registration for Professional Soil Classifiers. She said it is also recommended that consideration be given to shortening the name of the board. She said, just as there is a Board of Physical Therapy and a North Dakota Board of Athletic Trainers, there could be a Board of Soil Classifiers. She said with the exception of the State Board of Registration for Professional Engineers and Land Surveyors, the professional boards do not reference registration within their names.

Mr. Edland said he is not opposed to removing the reference to "professional" from the board's official name. He said he would, however, be opposed to removing the reference to "professional soil classifiers." He said, just as other professionals, soil classifiers are required to take examinations and have years of experience before becoming registered.

Mr. VanderBusch said among those who are registered as soil classifiers, there are three individuals who have doctoral degrees and about five who have master's degrees.

Senator Luick said he would like to know what a soil classifier does.

Mr. Edland said, originally, soil scientists were hired predominantly by the Natural Resource Conservation Service (NRCS), or the Soil Conservation Service, as it was known previously. He said their job was to map and classify soils. He said soils all have different properties and characteristics, and can be classified, just as one classifies a tree or a mammal. He said the function of those characteristics is what is used to make soil interpretations. He said, unlike geologists, soil classifiers look at suitable plant growth material, i.e., the upper five feet of the earth's surface.

In response to a question from Senator Luick, Mr. Edland said when the current law was enacted, the biggest user of soil classifiers was the coal industry. He said before any mine is stripped an "Order 1" soil survey is done. He said that survey is more intense than the one published by the NRCS. He said soil classifiers are now doing a lot of septic field work for interpretation and also identifying wetlands and mitigation sites. He said soil classifiers do very detailed soil surveys for landfills before land is stripped, so that people know there is suitable material to cover the landfill. He said, right now, there are a lot of out-of-state companies operating in North Dakota. He said those companies have people from all over the United States and they may not be familiar with the soils of this state. He said, given all the spills we are having, we really need people from around this region to get the soils back to what they were.

In response to a question from Senator Luick, Mr. Edland said all soil classifiers were soil scientists. He said when he worked for the NRCS, he was considered a soil scientist, not a soil classifier. He said they are essentially one in the same. He said, since he began contract work, most of his efforts have been in the area of mine reclamation, whether for coal mines or sanitary landfills. He said they are really focused on saving a resource that has been there a long time.

Chairman Schmidt said he wondered if a soil scientist has to be a professional soil classifier in order to determine hydric soils for purposes of wetland delineation.

Mr. Edland said he feels so. He said one can take core classes that train one to be a delineator. He said he has encountered individuals from Minnesota and South Dakota, and individuals from North Dakota who have taken core training, and who have said all of the soils are hydric because they are all black. He said if they look at the exemptions in the hydric indicator book, it specifically states in the notes that that is not the case. He said he has seen people say that a soil is hydric because it meets particular hydric criteria. However, he said, if one digs deep enough, one sometimes finds that the soils do not meet the criteria. He said a lot of people and companies are doing wetland determinations. He said he just hopes that they are doing justice to both the landowner and the resource.

In response to a question from Representative Trottier, Mr. Edland said hydric is one of the three indicators to identify a wetland. He said in order for a wetland to exist, there must be plants, hydrology, and hydric soil. He said hydric soils have to meet certain criteria with respect to color and wetness. He said these are all identified in the hydric wetland guide.

In response to a question from Senator Bowman, Mr. Edland said soils are very specific. However, he said, there will be a gray area between one soil and the next. He said sometimes the determinations are more art than science.

In response to a question from Representative Larson, Mr. Edland said he would not have a problem removing the reference to "professional" from the name of the board. He said he would, however, have a problem with removing the word "professional" as it refers to soil classifiers within the chapter.

Committee Counsel said the first consideration is whether the reference to registration should be removed from the title of the board. She said the board could simply be called the Board of Professional Soil Classifiers. She said the use of the word "professional" will be addressed in a subsequent section.

Mr. VanderBusch said he would be fine with dropping the word "registration" from the title.

Mr. Edland said North Dakota was one of the first states to enact a professional soil classifier's registration law. He said a lot of other states patterned their laws after North Dakota's law. He said about half of the states have registered professional soil classifiers. He said Nebraska and Texas have such laws. He said South Dakota does not. He said Texas has requested reciprocity with North Dakota. He said North Dakota has some issues with that request.

In response to a question from Senator Luick, Mr. VanderBusch said North Dakota requires two tests to become registered. He said one is a fundamental test and one is a practical test. He said the fundamental test is administered by the American Society of Agronomy. He said we have gone to their nationally accepted written test. He said we also have our own practical test. He said we require an individual to do soil descriptions and interpretations to demonstrate that the individual actually knows how soils react in this state. He said he believes that Minnesota and Texas have the fundamental test requirement and the practical test requirement. He said the states all have some kind of testing in order to ensure that whoever works in their area has familiarity with their soils.

In response to a question from Senator Luick, Mr. Edland said the reason North Dakota does not have reciprocity with Texas is because Texas was willing to accept our fundamental test, which was used before the national test, but Texas still wanted candidates to take the Texas practical examination. He said, in turn, we wanted Texas candidates to take our examination.

In response to a question from Representative Boe, Mr. VanderBusch said the number of professional soil classifiers has held fairly steady since 1973. He said this year two individuals became registered in the state. He said we have always been a small entity, largely because of the available work. Now, he said, with the expansion of work, we are trying to get more people registered as soil classifiers. He said that is one of the board's current goals.

In response to a question from Representative Boe, Mr. VanderBusch said there are 16 registered soil classifiers who are practicing. He said the dues are different for soil classifiers who are registered but not practicing.

Mr. Edland said one of the reasons the board wanted to modify the bill was that individuals from other states who sought registration in North Dakota were not able to find the requisite number of soil classifiers to serve as references. He said in 2013, the number of required references was changed from three to one. He said the board felt that would be sufficient, provided the candidate would take the examinations and demonstrate the ability to interpret North Dakota soils correctly. He said, right now, they have two individuals who are soil classifiers-in-training.

Committee Counsel said the current law defines "kind of soil." She said that definition is used only in subsections 3 and 7 of the definition section. She said the query is whether it is necessary to define "kind of soil," given the fact that "soil" is also defined.

Mr. Edland said "kind of soil" should be defined somewhere. He said he is not certain that the current reference to landscape and morphology is what is needed. He said it is important to define soil.

In response to a question from Committee Counsel, Mr. Edland said it would be possible to work on a definition that incorporates both. He said having a definition of "soil" is the primary need. He said the board realizes that some of this is not very understandable and that there is a need to modernize the language.

Committee Counsel said current law defines the "[p]ractice of soil classifying and [the] practice of professional soil classifying." She said an attempt was made to take a very long definitional sentence and break it into component parts so that one could begin to see what is actually in the current definition. As an example, she said, paragraph 5 references "maps and reports" and "maps and reports of soil properties."

Committee Counsel said it must also be noted that this definition is for the "practice of soil classifying" and the "practice of professional soil classifying." She said, from a statutory perspective, if they are separate concepts, they need to have separate definitions. She said, if on the other hand they are the same concept, then there is no need for the two phrases. In addition, she said, the use of the word "professional" needs to be addressed. She said if a reference is made to "professional" soil classifying, there is an implication that there is an alternative--i.e., nonprofessional or amateur soil classifying.

Mr. Edland said he does not have an issue with selecting one or the other of the two phrases.

Committee Counsel said there is no need to retain the verbiage on page 2, lines 13-17, indicating the conditions under which a person is "construed" to practice or offer to practice soil classifying. She said the definition section should make clear what activities are included within the concept.

Mr. Edland said he does not have an issue with rewording this section.

Committee Counsel said beginning on page 2, line 18, exemptions from the practice of soil classifying are included for individuals who are performing a specific job under reciprocity, for individuals who are employees or subordinates of soil classifiers, and for an individual who is engaged in soil classification for an employer. She said it appears that an individual is exempt from the registration requirements if the individual is "employed" to perform soil classification but not if the individual is "under contract" to perform soil classification services. She said the reason for the distinction is not evident.

Mr. Edland said he does not believe that there should be a difference with respect to the registration requirements. He said, regardless of whether one is employed or under contract, a registered soil classifier must sign off on the work to be done.

Committee Counsel said on page 3, line 1, there is a provision stating that one is not construed to be practicing soil classification if the individual is conducting engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. She said this would appear to include roads, buildings, tiling, etc. However, she said, on page 2, lines 1-2, soil classification is referenced as meaning the investigation of, evaluation of, and consultation regarding the effect of soil properties upon various uses and on page 2, lines 8-9, soil classification is referenced as meaning determinations regarding the effect of soil properties upon various uses. She said the exception appears to fall within the standard definition of soil classification.

Mr. Edland said these are gray areas. He said, in Cass County, one can use a professional soil classifier to do septic sitings or one can use a professional engineer. He said engineers generally use percolation tests, while soil classifiers use a classification system. He said, generally, the two are interpreting different soil properties. He said professional soil classifiers focus primarily on agricultural uses. He said they look for suitable plant growth material and not for construction material.

With the permission of Chairman Schmidt, Mr. Grady Wolf, KLJ, Bismarck, presented testimony regarding soil classifiers. He said KLJ has about 40 staff members who work in the environmental field and get involved in some aspect of soil work. He said KLJ does not have a professional soil classifier on staff. He said KLJ does not offer professional soil classifying services nor claim to offer such services. However, he said, some of the work that KLJ staff members do in the environmental field requires that they look at certain parameters of soils.

Mr. Wolf said there was a question regarding what constitutes a hydric soil. He said hydric soil is defined by the Army Corps of Engineers. He said the corps has federal regulatory authority over wetlands. He said the NRCS and the United States Department of Agriculture are also involved with wetlands through their farm programs. He said many of the current professional soil classifiers used to be NRCS employees and in that capacity, dealt with the farm programs.

Mr. Wolf said there is a question with respect to whether a soil classifier is needed to determine if a soil is hydric. He said the Army Corps of Engineers has standards that clearly define what constitutes a wetland. He said the standards do not require that a professional soil classifier be used in making the determination. He said, under the standards, if a soil has a certain parameter that meets the definition of hydric, one can essentially check a box and consider that soil to be hydric. He said the standards clearly define what constitutes vegetation and what constitutes hydrology, for purposes of determining a wetland.

Mr. Wolf said there is an exception in the current law for engineering surveys. He said those do not have to be conducted by professional soil classifiers. He said there are many engineers who on a daily basis look at soils for constructability. He said an engineer can build a million dollar skyscraper but cannot determine what constitutes a wetland, because he or she might have to be a professional soil classifier.

Mr. Wolf said KLJ would like to see not only an exception for engineering surveys, but also an exception for wetland delineations, because those are clearly defined in federal regulations.

In response to a question from Representative Schmidt, Mr. Wolf said, when working for a private client, KLJ does not have a professional soil classifier dig a hole and check the box to determine whether the soil is hydric. He said KLJ has a professional soil classifier available for its use when necessary. He said certain clients specify that a professional soil classifier be used. He said the reason is because of the gray area in the current law.

In response to a question from Representative Schmidt, Mr. Wolf said the North Dakota Department of Transportation requires that a professional soil classifier be used because of the gray area in the current law. He said the Department of Transportation builds roads. He said it is not clear whether that activity is considered an engineering project and is therefore exempt from the requirements of this chapter with respect to the use of professional soil classifiers. He said when doing work for farmers and ranchers who are dealing with the farm programs, KLJ will often use a professional soil classifier because that is what the administrators of those programs like to see. He said the United States Department of Agriculture has always had professional soil classifiers and believes that professional soil classifiers are necessary for their programs. He said for the remainder of their private clients, 99 percent of the time, KLJ does not use professional soil classifiers because KLJ believes that they are not required.

Mr. Wolf said earlier there was a statement that 50 percent of the states have professional soil classifiers. He said that might be the case. However, he said, that does not mean that those states require an individual to be a professional soil classifier in order to perform wetland delineations. He said Minnesota, for example, recognizes professional soil classifiers. However, he said, Minnesota does not require individuals to be professional soil classifiers in order to classify hydric soils. Again, he said, the criteria for a hydric soil is clearly set forth in the federal regulations. He said Minnesota does have a certification program for wetland specialists. He said most if not all of KLJ's wetland people have gone through the training and are certified to work in Minnesota. He said they can look at soils and every other parameter and clearly define hydric soils in Minnesota, but not in this state.

Senator Luick said, since 1994, he has been working in Minnesota to design, install, and inspect septic systems. He said every year he took soils classes as part of his continuing education requirements. He said those classes prepared him for the design work. He said even though he is a North Dakota resident, most of his work is done in Minnesota. He said it appears that in order to do this same septic system design work in North Dakota, he would have to be a professional soil classifier.

Mr. Wolf said there are professionals other than soil classifiers who could do tests looking at saturation and holding capacities and make the necessary design determinations.

Senator Luick said he wonders if in many instances, there is really a need for a professional soil classifier, or whether the work could be done by someone else. He said, during training, they were told that percolation tests are archaic because of all the organic matter that could be in the soils and that classification is actually a better option. He said he questions whether the background and training required of soil classifiers is necessary in every instance.

Mr. Wolf said he worked at an NRCS office before being employed by KLJ. He said he has worked on the farm programs. He said he has also been out in the field with professional soil classifiers doing wetland work. He said he is quite familiar with the Army Corps of Engineers regulations. He said it is his responsibility to review and sign off on the accuracy of the reports being sent to the corps. He said some of the information he has received from professional soil classifiers did not meet the federal criteria. He said just because one is a professional soil classifier does not guarantee that the conclusions are always correct. He said, under the federal guidelines, if one can say that a soil has a certain type of structure or a certain color and check a box, then the soil meets the federal definition and qualifies as hydric.

In response to a question from Representative Schmidt, Mr. Wolf said depending on the parameter that is being defined, if one took a high school student into the field and showed that student 75 percent of the indicators that are used to define hydric soil, that student would be able to determine whether the soil is hydric.

### **STAFF DIRECTIVES**

Representative Rust said in order to better understand this chapter, it might be helpful to hear additional perspectives regarding the need for services involving soil determinations and the type of education and training that is appropriate to the provision of those services.

Representative Boe said he too would like to hear from other agencies and entities regarding their perspective on the importance of soil classification services.

Chairman Schmidt said he would like to have testimony regarding who uses soil classifiers and whether that level of expertise is necessary.

No further business appearing, Chairman Schmidt adjourned the meeting at 3:00 p.m.

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L. Anita Thomas  
Committee Counsel

ATTACH:4