

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**AGRICULTURE COMMITTEE**

Tuesday, January 14, 2014  
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, Chuck Damschen, Dennis Johnson, Dwight Kiefert, Diane Larson, Wayne Trottier; Senators Bill L. Bowman, Jim Dotzenrod, Robert Erbele, Larry Luick, Joe Miller

**Members absent:** Representatives Bill Amerman, Tracy Boe, Bob Hunskor, David S. Rust, John Wall

**Others present:** Senator Larry J. Robinson, member of the Legislative Management, was also in attendance. See [Appendix A](#) for additional persons present.

**It was moved by Representative Johnson, seconded by Senator Erbele, and carried on a voice vote that the minutes of the November 4, 2013, meeting be approved as distributed.**

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

Chairman Schmidt said the presentation regarding Bank of North Dakota (BND) farm loan programs is on the agenda for informational purposes only. He said the committee has not been assigned a study in this regard.

At the request of Chairman Schmidt, Mr. Robert Humann, Chief Lending Officer, Bank of North Dakota, presented testimony regarding farm loan programs. He distributed a document entitled *2013-2014 BND Farm Loan Programs* ([Appendix B](#)) and one entitled *Farm Recap 12/31 Pending & Funded* ([Appendix C](#)). He said the beginning farmer real estate loan program and the established farmer real estate loan program are the only two for which farmers can make a direct application to BND. He said all other loans on which BND works come from a lead lender such as a credit union, another bank, or AgCountry Farm Credit Services. He said BND does purchase FSA guarantees from banks to help them with liquidity concerns.

In response to a question from Senator Luick, Mr. Humann said borrowers have to be at least 18 years of age. He said a lot of the borrowers are in the 19 to 25 age group. He said BND does not discriminate against individuals who might be older than that. He said the ratio of males to females is 98 to 2.

In response to a question from Senator Erbele, Mr. Humann said BND sets loan qualifications based on individuals, not on holding companies or limited liability corporations (LLCs). He said the loan is made to an individual. He said if the individual eventually wants to put the land in a partnership, that can be done.

In response to a question from Senator Robinson, Mr. Humann said delinquencies have been almost nonexistent. He said it is hard for an individual to walk away from the individual's equity in the current market. He said BND is rolling the dice that the prices for commodities will stay high. He said farmers have enjoyed some good years, and there has been more capital investment in agriculture than he has ever seen.

In response to a question from Senator Erbele, Mr. Humann said BND is forecasting that interest rates will continue to be fairly stable for 2014, but will increase in 2015. He said, even in 2014, if one can find a good fixed interest rate, one would be wise to take advantage of that. He said the low interest rates have reduced the number of farm delinquencies.

In response to a question from Representative Johnson, Mr. Humann said BND participates with AgCountry Farm Credit Services, but not on farm real estate loans. He said Farm Credit Services will only use BND programs such as Ag PACE. He said very rarely is it that AgCountry Farm Credit Services will refer a beginning farmer to BND for the beginning farmer program. He said AgCountry Farm Credit Services has its own similar programs. He said AgCountry Farm Credit Services has a huge lending capacity and very attractive interest rates. He said if a loan is too big for AgCountry Farm Credit Services, it sells it to another association down the road.

## MILK MARKETING BOARD

Chairman Schmidt said each committee member has received a copy of the [Milk Marketing Board - Background Memorandum](#) prepared by the Legislative Council staff. He said because the committee is behind schedule, he will forego the presentation of the memorandum but asked that the committee members review the document at their convenience.

At the request of Chairman Schmidt, Ms. Shirley Gummer, Chairman, Milk Marketing Board, presented testimony ([Appendix D](#)) regarding the board.

In response to a question from Representative Trottier, Mr. John Weisgerber, Executive Director, Milk Marketing Board, said the board establishes different prices for different milk marketing areas. He said the price that is established for the metropolitan areas of the state is approximately four cents lower than that in the nonurban areas, in large part because of transportation costs.

Mr. Weisgerber said, about 15 years ago, the stores generally charged the minimum retail price. He said in the last 15 years that minimum price often has been exceeded, in part because of some costs that the board did not take into account. He said Wal-Mart has tremendous buying power and can purchase its milk at a lower cost because Wal-Mart buys a whole semiload at a time. He said that is 4,000 gallons to 5,000 gallons. He said Wal-Mart operates with a smaller margin. He said smaller retail stores pay more for their milk.

In response to a question from Senator Robinson, Mr. Weisgerber said, for the month of January, the minimum price for a one gallon plastic jug of skim milk is \$3.63. He said that is based on the raw milk price. He said CVS sells milk at the minimum price. He said a recent study showed that the price in Center was \$1 higher. He said convenience stores tend to charge more than the minimum. He said their business model is based on consumers wanting to get in and out quickly. He said, therefore, they charge more for that convenience.

Mr. Weisgerber said he has heard that the price for a gallon of milk in the Williston area is in the \$5.00 range. He said the price of a highball in a bar is more than that.

In response to a question from Representative Johnson, Mr. Weisgerber said because of interstate commerce issues, the Milk Marketing Board cannot regulate sales that take place out of state. He said if a retailer goes to Thief River Falls, Minnesota, to purchase product, the board cannot address that purchase because the point of sale is in Minnesota. He said Costco buys all of its milk from Superior Dairies in Canton, Ohio.

In response to a question from Senator Robinson, Mr. Weisgerber said Wal-Mart buys all of its product from Dean Foods. He said that milk comes from the plant in Bismarck or from the one in Thief River Falls. He said Wal-Mart buys locally. He said 14 percent of the milk sold in this state is impacted by the ability to circumvent the Milk Marketing Board.

In response to a question from Senator Dotzenrod, Mr. Weisgerber said North Dakota has fewer dairy farmers and fewer processing plants, but those that remain are getting bigger. He said North Dakota has approximately 110 dairy farmers. He said the average dairy herd size is 125. He said there are four processors in this state. He said they are located in Bismarck, Fargo, and Bottineau. In addition, he said, there is a "jugger" on a farm east of Bismarck.

In response to a question from Senator Luick, Mr. Weisgerber said even though we hear that milk prices are much lower elsewhere, the International Association of Milk Control Organizations indicates that everyday prices in North Dakota are at or below the average. He said, in other areas, if milk is selling for \$1.59 a gallon, that is just a loss leader.

Chairman Schmidt said he was told that an individual who has a convenience store under a franchise could not purchase milk from the franchisor, Farner-Bocken Company, but had to buy from a North Dakota distributor.

Mr. Weisgerber said the Milk Marketing Board uses licensure to regulate the sale and distribution of milk. He said there is a multitude of institutional suppliers, e.g., Farner-Bocken, Cisco, Perlman-Roque, Core-Mark, etc., which service convenience stores. He said the board has had many hearings about whether to grant licenses to such entities. He said the law requires a distributor to service every account in the marketing area, not just cherry-pick the good accounts. He said generally, they just want to service the convenience stores and not bother stopping at other little places. Therefore, he said, the board has not granted licenses in these instances. He said in the case of the referenced convenience store owner, she had been purchasing her milk from a small local distributor--Gray Brothers Dairy in Stanley. He said Marshall Gray is the third generation owner. He said Gray charges a little bit more. He said that makes sense because instead of the creamery going to the store, the

distributor goes to the store. He said that is one more layer that has to make a margin. He said the comment was made that milk could be purchased cheaper from Costco in Fargo than from the distributor in Stanley. He said one of these smaller distributors is Mr. Steve Kuhle from Mayville. He said Mr. Kuhle drives up to Park River and down to Interstate 94, and he services everybody in between. He said Mr. Kuhle will go farm to farm as well. He said, in between, Mr. Kuhle has some better accounts with larger volume--some convenience stores. He said if he loses that volume, Mr. Kuhle still has the miles, and he will not be able to continue providing the service.

With the permission of Chairman Schmidt, Mr. Tom Woodmansee, President, North Dakota Grocers Association, presented testimony regarding the Milk Marketing Board. He said he believes this is the seventh time that this issue has come before the Legislative Assembly. He said, from time to time, retailers have had their differences with the board, as have some of the processors and some of the dairy farmers. However, he said, they always have been able work out their differences. He said while we all believe in free trade and competition, rest assured that if the board goes away, our rural grocery stores and some of our other stores will not have the service that they do right now. He said we need to resolve any differences so that we ensure continued service to our small retailers, as well as our hospitals and nursing homes.

With the permission of Chairman Schmidt, Mr. Ole Johnson, Destiny Dairy, Center, presented testimony regarding the Milk Marketing Board. He said he moved here from a federal order system. He said producers cannot afford to lose the board.

With the permission of Chairman Schmidt, Mr. Mike Kraft, part owner of stores in Stanley, Tioga, and Williston, presented testimony regarding the Milk Marketing Board. He said he has been in Williston since 1982. He said they do not have a gouging situation. He said in order to sustain his business, he has had to build housing for his employees. He said he also pays \$4.00 to \$5.00 more per hour just to get employees. He said the free market system will prevail. He said as North Dakota gets more people, there also will be more folks to deliver to in the rural areas. He said the fact that stores are being built in the western communities is great. He said the board ensures that the store owners can make a profit. He said the prices are lower in Arizona, because one does not have the transportation costs. He said we need to have Dean Foods and Cass-Clay deliver milk to the man camps.

## APIARIES

At the request of Chairman Schmidt, Ms. Samantha Brunner, State Bee Inspector, Department of Agriculture, presented testimony ([Appendix E](#)) regarding the North Dakota apiary program.

In response to a question from Senator Miller, Ms. Brunner said the apiary-related complaints she receives are relatively small in number given the large number of hives in this state. She said most states do not regulate the positioning of hives. She said California is the only state that has a similar number of hives, and the Californians very much want to have the bees. She said some states set limits with respect to how close beekeepers can be to each other. She said that is mainly for disease prevention purposes.

In response to a question from Senator Bowman, Ms. Brunner said there is no restriction governing hive placement in proximity to a road. She said large equipment is often used to situate an apiary.

In response to a question from Representative Larson, Ms. Brunner said pesticides, varroa mites, and genetic diversity, as well as poor nutrition have all been blamed for colony collapse. She said the cause of colony collapse has not been positively identified. She said, in cases of colony collapse, the colony simply disappears.

In response to a question from Senator Miller, Ms. Brunner said in a period of drought, pollen and nectar are in low supply. She said bees struggle at those times, just like other plants and animals.

In response to a question from Representative Damschen, Ms. Brunner said honeybees are very temperamental. She said she has not heard of honeybees swarming someone, even after the hive is gone.

In response to a question from Representative Larson, Ms. Brunner said North Dakota beekeepers are very understanding of the challenges that pesticide applicators encounter. She said they understand the need for chemicals.

In response to a question from Senator Luick, Ms. Brunner said bees generally stay within a one-mile radius of their hive.

In response to a question from Senator Dotzenrod, Ms. Brunner said beekeepers register their locations to the nearest quarter section. She said the department does not allow multiple beekeepers to register the same quarter section.

## GINSENG

At the request of Chairman Schmidt, Committee Counsel presented a bill draft [15.0023.02000] relating to ginseng. She said at its previous meeting, the committee reviewed the current North Dakota Century Code chapter governing ginseng. She said the chapter had been enacted in 1991 and never used. She said the committee asked for a bill draft that would provide a structure to accommodate the creation of any paperwork in the event such was ever needed for the purchase or sale of ginseng.

Committee Counsel said Department of Agriculture personnel had indicated that provisions in the Convention on International Trade in Endangered Species of Wild Flora and Fauna had to be accommodated. She said there are federal regulations setting forth various authorizations that a state or tribe must have in order to regulate a commodity such as ginseng. She said those have been accommodated in the bill draft. She said the draft would authorize the Agriculture Commissioner to implement rules relating to the management and harvesting of ginseng, including the registration of persons buying or selling ginseng, the creation and maintenance of records, inspection requirements, and the issuance of any certificates or other documents required in accordance with state or federal law.

**It was moved by Senator Bowman, seconded by Representative Johnson, and carried on a roll call vote that the bill draft [15.0023.02000] relating to ginseng be approved and recommended to the Legislative Management.** Representatives Schmidt, Damschen, Johnson, Kiefert, Larson, and Trottier and Senators Bowman, Dotzenrod, Erbele, Luick, and Miller voted "aye." No negative votes were cast.

## SOIL CLASSIFIERS

Chairman Schmidt said at the previous meeting of this committee it became clear that the committee needed more information about soil classifiers, how individuals become soil classifiers, what they do, how they are used by various state agencies and other entities, and why we need them.

At the request of Chairman Schmidt, Mr. Lawrence Edland, Edland's Soil Consulting, and Mr. Cornelius J. Heidt, Prairie Soil Consulting, presented testimony ([Appendix F](#)) regarding soil classifiers.

Mr. Edland said during the 2013 legislative session, a bill was introduced to reduce the reference requirements for registration as a soil classifier from five references, three of whom must be from professional soil classifiers, to three references, one of whom must be a professional soil classifier. He said individuals coming from out of state were finding the requirement too difficult to meet. He said the board was comfortable with this move because an applicant still had to take the practical examination and demonstrate that the individual was capable of correctly interpreting and classifying the soils of this state.

Mr. Edland said the bill also caused the board to review the requirements for soil classifiers-in-training. He said when he and his colleagues were soil classifiers-in-training with the United States Department of Agriculture Natural Resources Conservation Service (NRCS), it was fairly easy to get the requisite years of experience in order to become registered as a professional soil classifier. He said now the NRCS has very few soil classifiers or soil scientists working for it, and it is difficult to get the four years of experience. He said the chapter, which dates back to 1973, was in need of updating and clarification.

Mr. Edland said the soil classifier law was designed to protect the resources of this state for the public. He said the law has been around longer than the concept of hydric soils. He said there has never been an exclusion to a soil in the last 40 years, even though soils such as eroded soils and gravel soils could be excluded.

Mr. Edland said a soil classifier focuses on the properties or the morphology and genesis of the soil and the interpretation of such for specific uses. He said a soil scientist is primarily focused on interpreting data that is already available. He said a soil classifier must be able to interpret the landscape and identify the properties of the soil on that particular landscape.

Mr. Heidt said the impetus for this law came as a result of the coal mining reclamation process. He said it was initiated out of the North Dakota State University (NDSU) soils department where there are professors in the soil survey classification division. He said those professors recognized that to do this kind of work, individuals would have to have a good concept of the soil-landscape relationship. He said the topsoil and subsoil criteria for reclamation have to be related to the landscape. He said that is why this field was separated from other soil science options, such as soil chemistry and physics. He said soil chemists and soil physicists often do not have field experience nor landscape interpretation ability. He said since that time other issues, such as wetlands, have come into being. He said the hydric soil determinations naturally fell into the realm of soil classifiers.

Mr. Heidt said soil classifiers also get involved in aspects of disposal pits, septic fields, and precision farming. He said to exempt one kind of soil from a landscape parameter does not make sense because we do not know what the next big use might be.

In response to a question from Representative Damschen, Mr. Heidt said the criteria for hydric soils and the definition of a wetland are determined on a national level. He said there is a national committee that determines the indicators of hydric soil. He said those are based on evolving research. He said we do not know what those criteria or indicators might be tomorrow. He said we need people who are technically able to handle and deal with whatever comes.

Mr. Edland said, in order to become a soil classifier, one must have a four-year degree approved by the State Board of Registration for Professional Soil Classifiers. He said the required curriculum must emphasize soils and related fields of study, such as geography, geomorphology, and geology. He said the focus must be on the morphology and genesis of the soils, the landscape-landform relationship, and the documentation of soil properties, i.e., horizons, depths, physical properties such as texture and structure, and chemical properties such as salinity and sodicity. He said in addition, four years of experience is required. He said the experience must be approved by the board.

Mr. Edland said there are other options for registration. He said as an example, if one's curriculum is not approved by the board, eight years of experience is required.

With the permission of Chairman Schmidt, Committee Counsel asked for clarification. She said the programs of study in order for an individual to become a nurse, a doctor, a lawyer, an engineer, etc., are well-documented. She said in the case of soil classifiers, the law references a "soils curriculum approved by the board" and in the testimony reference was made to a curriculum that "emphasizes" certain courses of study. She said if a high school student wanted to become a soil classifier, what postsecondary courses does that student have to take.

Mr. Heidt said the educational component has been left to the board. He said people of varying backgrounds do soil survey work. He said they may not all have a degree in soils. He said they may have a related degree. He said it is up to the board to decide whether an individual's educational preparation meets the board's requirement. He said if the educational preparation meets the requirements that the board wants, then the applicant needs only four years of field experience. He said if the applicant has an economics degree or a degree in agricultural economics, then the individual would have to demonstrate eight years of field experience. He said the field experience is the most important component. He said the educational component is not as defined as that of a nursing school.

In response to a question from Representative Schmidt, Mr. Heidt said when NDSU had its soils degree, that curriculum met the board's requirements.

In response to a question from Representative Schmidt, Mr. Heidt said NDSU no longer offers its soils degree. He said now it offers a natural resources degree that incorporates a lot of soils background. He said they have some options that are focused toward soils. He said he believes one can still get a soils degree at NDSU, but it is not as rigorous as it was years ago.

In response to a question from Representative Schmidt, Mr. Heidt said in most cases, if a student comes out of the natural resources program and if the student has an adequate soils background, that would probably be acceptable.

Mr. Edland said the board reviews the course material. He said NDSU still provides a soil science degree through the Department of Natural Resources.

In response to a question from Representative Schmidt, Mr. Edland said the law could reference as educational preparation a degree from the Department of Natural Resources at NDSU, provided it was reviewed by the board.

Mr. Edland said his handout includes the NRCS's *Field Indicators of Hydric Soils in the United States*. He said this is a guide for identifying and delineating hydric soils. He said it is not criteria for doing so. He said the guide allows for gray areas. He said if it were criteria, they would be set in stone. He said in the Northern Plains there are a lot of gray areas in the hydric soil indicators. He said many of the hydric soils that are delineated in the Northern Plains are delineated using the indicators. He said hydric soils can be among the most complex and difficult to identify and observe. He said some hydric soils lack any of the listed indicators. However, he said, that does not mean that they are not a hydric soil.

Mr. Heidt said he cannot stress enough the soil-landscape relationship. He said if someone is just using the indicators to determine whether a soil is hydric, that individual is missing the boat--a lot. He said some soils that do not have indicators are hydric soils and some soils that have indicators are not hydric soils. He said one really needs to understand the landscape. He said in eastern North Dakota the difference between a wetland and a nonwetland can be mere inches in elevation. He said in North Dakota there also are a lot of relic features. He said they may reflect an ancient climate or a contemporary wetland. He said that is true whether one is trying to identify hydric soils or conducting interpretations for septic system installations.

In response to a question from Representative Schmidt, Mr. Heidt said he has done thousands and thousands of wetland delineations and the determination is clear-cut less than half of the time. He said the dark black soils that are in this state mask a lot of the indicators that were set up for other parts of the country.

In response to a question from Senator Luick, Mr. Edland said determining the border between soil properties or soil types is done by collecting the documentation or the soil property information and the landscape information.

In response to a question from Senator Luick, Mr. Edland said the county soil surveys were completed in the early 1990s for the whole state. He said they started in the 1930s. He said a high-intensity survey was not done for the entire state. He said such surveys are done on an "as needed" basis.

Senator Bowman said given all the advances in agricultural practices and crop technologies, he wonders how useful soil surveys are today versus 20 or more years ago.

Mr. Heidt said the county soil surveys would be too general for a lot of the precision agriculture that is happening today. He said things like yield indicators would provide more productivity information on a field-by-field basis than the county soil maps.

Mr. Edland said the impact of using someone who is not knowledgeable about the soils and the landscape can be substantial when it comes to locating wetland boundaries for drainage or mitigation purposes. He said the original NRCS wetland maps could have been done by anyone. He said if one uses that map for mitigation purposes, one may be mitigating more or less land than is actually needed. He said being able to accurately delineate the wetland or identify hydric soil is critical to that individual. He said having a correct soil identification for purposes of farm programs can impact farmers in the range of millions of dollars.

Mr. Edland said generally, when it came to doing wetland delineations, he only dealt with the hydric soils. He said normally, he would be accompanied by a hydrologist and by a biologist who would examine the plants. He said it takes all three criteria in order to have a wetland designation. He said one does not walk to the center of a wetland to identify a wetland. He said one walks to the edge. He said often, particularly in North Dakota, those hydric indicators are going to be missed in the center of the wetland. He said the soils will be too dark or too saturated with water for identification.

Mr. Heidt said, particularly in the eastern portion of the state, wetlands have been drained by surface drains or other means. He said a wetland has to be in a landscape position that allows it to collect ground water. He said when an area has been drained, even to a moderate extent, the hydrology is gone and the plants are gone because they cannot grow without the water being present. He said the only indicator is the hydric soil, because that is consistent and does not change as rapidly as the other features. He said the determination as to where the original wetland boundary is often comes down to the identification of hydric soil. He said a correct identification is very significant to farmers and they should have professionals not only making the determinations but defending the determinations in the case of an agency review.

Mr. Edland said a number of his clients require that he carry professional insurance. He said he does not certify the wetland. He said that is up to the entity having jurisdiction. He said that is generally the Army Corps of Engineers or the NRCS. He said he wonders what recourse a client has if an individual who is not a registered soil classifier is engaged in wetland delineation. He said functioning as a soil classifier without being registered is a Class B misdemeanor. He said prior to his service on the board, there have been instances when cease and desist letters were sent to individuals.

Mr. Edland said both the board and NDSU are pushing for an expansion of the soil classifier numbers. He said if the work is available, the people that are required will come as well. He said up until this point there has not been a great need for soil scientists. He said the main utilizer was the coal industry, which wanted high-intensity surveys for the coal mines. Now, he said, soil classifiers are involved not only with wetlands but also with septic systems, sanitary landfills, and a whole host of things that require professional training.

Mr. Edland said North Dakota was the first state to recognize the need for registration of professional soil classifiers in order to protect the state's natural resources. He said he was asked why North Dakota is not more like the other 17 or 18 states with respect to the registration of professional soil classifiers. He said perhaps those states should be more like North Dakota. He said we have a strong soil classifier law in this state. He said the law has stood the test of time.

Senator Luick said he is still confused about the distinction between soil classifiers and soil scientists. He said he would like to find out which has the higher level of knowledge.

Mr. Heidt said it is not possible to say that a soil classifier stands above a soil scientist or vice versa. He said he does not claim to be a soil chemist or a soil physicist. He said they do different things. He said areas such as soil chemistry and soil physics are more academic. He said they are not field-oriented. He said they do not interpret landscapes. He said with respect to soil classifiers and soil scientists, it is not a matter of one being better than the other. He said they both do different things.

Mr. Edland said there are mechanical, civil, electrical, and chemical engineers.

Mr. Heidt said at the last meeting comments were made along the lines of: if an engineer can design a skyscraper, he should certainly be able to identify a hydric soil. He said that is not a valid comparison. He said that is like saying because one can design a skyscraper, one should be able to cut hair or be a plumber or an electrician. He said they are different skill sets.

In response to a question from Senator Dotzenrod, Mr. Edland said for the first 15 years that he worked for the NRCS, they probably had 10 to 15 soil scientists on staff. He said the 1985 Farm Bill required that all agricultural land be surveyed. As a result, he said, the NRCS went from 10 to 15 soil scientists to 43 soil scientists. He said, since the completion of the surveys, the NRCS has again reduced the number of their soil scientists to 10 to 12.

In response to a question from Senator Dotzenrod, Mr. Heidt said the Order II soil surveys are the county maps that are used for taxation. He said the United States Fish and Wildlife Service made a national wetlands inventory. He said that was done mainly using aerial photo interpretations. He said with the 1985 Farm Bill, the NRCS became responsible for agricultural wetlands. He said the NRCS then made wetland maps. He said those maps were made by people who had some training, but again, used aerial photo interpretations.

In response to a question from Senator Dotzenrod, Mr. Edland said there is currently no requirement for continuing education. He said it has been suggested that this be added to the legislation.

In response to a question from Senator Dotzenrod, Mr. Edland said of the 28 registered soil classifiers in the state, 16 are active.

In response to a question from Senator Miller, Mr. Heidt said if two soil classifiers worked on the same piece of land, their maps might not be exactly the same. He said there is some art involved in interpreting the landscape. However, he said, their interpretations should be the same. He said that is the critical thing.

Mr. Edland said soil classifiers use technical references to ensure consistency.

At the request of Chairman Schmidt, Mr. David Dewald, Wetland Mitigation Specialist, Environmental and Transportation Services Division, Department of Transportation, presented testimony ([Appendix G](#)) regarding soil classifiers.

Mr. Dewald said, in order to conform to the North Dakota professional soil classifiers law, the Department of Transportation requires that consultants making hydric soil determinations for wetland delineation utilize professional soil classifiers. He said the Army Corps of Engineers wetland classification protocol does not require that hydric soil determinations be completed by professional soil classifiers. He said the NRCS does not require professional soil classifiers for hydric soils determinations. He said when the NRCS contracts with private consulting firms, those firms are required to use professional soil classifiers in order to comply with the state law mandating the use of professional soil classifiers.

In response to a question from Representative Schmidt, Mr. Dewald said he has not heard of any problems getting soil classifiers. He said the soil classifiers have been available when the Department of Transportation has needed them.

In response to a question from Representative Schmidt, Mr. Dewald said without professional soil classifiers to delineate wetlands, the Department of Transportation would consider utilizing a wetland delineator certification program. He said the process to become a certified wetland delineator already exists. He said Minnesota has such a course.

In response to a question from Representative Schmidt, Mr. Dewald said the United States Fish and Wildlife Service uses a definition of hydric soil that is different from that used by the Department of Transportation, the Army Corps of Engineers, and the NRCS. He said there are three components to a wetland--plants, hydric soil, and hydrology. He said the United States Fish and Wildlife Service can put land under its wetland easement program if any one of those components is present.

Representative Schmidt said what NRCS accepts as a wetland delineation from a consultant has a lot to do with the credibility of the consultant.

At the request of Chairman Schmidt, Mr. Steve Tillotson, Assistant Director, Division of Waste Management, State Department of Health, presented testimony ([Appendix H](#)) regarding soil classifiers.

Chairman Schmidt said the testimony provides that with respect to oilfield waste disposal facilities, all sites used the services of registered professional soil classifiers to ensure adequate topsoil and subsoil is available and is segregated for facility closure. He said he wonders if a soil scientist could provide the same information.

Mr. Tillotson said he does not believe so.

At the request of Chairman Schmidt, Mr. Dean Moos, Assistant Director, Reclamation Division, Public Service Commission, presented testimony ([Appendix I](#)) regarding soil classifiers. He said North Dakota's reclamation law requires that the mine permit soil survey be prepared by a professional soil classifier.

In response to a question from Representative Larson, Mr. Moos said when the reclamation law was first passed, it recognized the predominance of agriculture and the need to require that mining companies restore the original capabilities of the land. He said this state requires the companies to restore mined land to 100 percent of its premined capability. He said we are the only state that requires 100 percent. He said the federal government requires only 90 percent. Therefore, he said, it is important to know the soil resources with which one is starting and to know that there is adequate material to reclaim and restore the land.

Mr. Moos said, prior to the 1973 Reclamation Act, the top soil was basically mixed in with the spoils. He said restoring productivity to land is based on salvaging and replacing the soils.

Chairman Schmidt said topsoil in one place might be three inches deep and 20 yards away it might be six inches deep. He said if one does not have a detailed soil survey, one could end up mixing three inches of subsoil with the topsoil, thereby lowering the productivity index of the land. He said that is why the delineation needs to be more than an Order II survey.

Mr. Moos said the Order II surveys are completed for the counties. He said the surveys completed for the mines are Order I surveys, and they are a lot more detailed.

At the request of Chairman Schmidt, Ms. Sandi Tabor, Director of Government Relations, KLJ, presented testimony regarding soil classifiers. She said KLJ is not in any way discounting the importance of soil classifiers. She said KLJ's issue has to do with the reason why other professionals with field experience are precluded from conducting wetland delineation. She said other states like Minnesota and federal entities like the Army Corps of Engineers allow professionals who have specific training in wetland delineation to do that work.

Ms. Tabor said there is a need to obtain clarification on the exemption in Section 43-26-24. She said the Department of Transportation requires in part that engineering firms use soil classifiers to do wetland delineations because of the lack of clarity with respect to the exemption language in the cited section. She said requiring the use of soil classifiers as opposed to other professionals who are certified in wetlands delineation is in fact affecting, if not preventing, KLJ employees from carrying out their professions.

At the request of Chairman Schmidt, Mr. Kevin J. Magstadt, Principal and Regional Manager, Wenck Associates, Inc., presented testimony ([Appendix J](#)) regarding soil classifiers. He said Wenck Associates is an engineering and environmental services firm. He said professional soil classifiers have expertise that civil and environmental engineers do not.



At the request of Chairman Schmidt, Ms. Kathleen Spilman, Managing Director, Keitu Engineers & Consultants, Inc., presented testimony ([Appendix K](#)) regarding soil classifiers. She said there is a competing and oftentimes mutually exclusive motivation between the need to have competent practitioners versus a natural and understandable tendency of individuals to protect their livelihood and their competitive advantage. She said there are fewer than 16 actively practicing soil classifiers in the state. She said 25 percent of this state's practicing soil classifiers are sitting in this room.

Ms. Spilman said the licensing requirements for this profession need to be both practical and realistic, otherwise there will not be enough people to replace those soil classifiers who are retiring or otherwise leaving the practice. She said this afternoon the question was raised regarding the major in natural resources available at NDSU and whether that major qualified as an approved curriculum for purposes of becoming a soil classifier. She said the discussion sidestepped the actual answer. She said the answer that was given was that if a degree was obtained with a major in soil science, that would qualify. She said the board representative did not address whether a minor would be appropriate or whether the board would accept a natural resource major from NDSU, let alone comparable programs from other institutions such as the University of Minnesota - Crookston. She said the board is very narrowly defining the people who might be eligible to become soil classifiers.

Ms. Spilman said there are a lot of gray hairs on the soil classifiers that have presented testimony this afternoon. She said it is not realistic to expect the statutorily required level of field experience in order for an applicant to sit for the soil classifier examinations. She said there are very limited opportunities to work on projects in this state, in order to acquire the requisite experience. She said, right now, experience can be gained delineating wetlands and siting septic systems. She said there is nothing comparable to the 1970s and 1980s when the county soil surveys were being done. She said those provided probably 180 days of experience each year. She said wetlands and septic systems provide only short duration experience.

Ms. Spilman said the law, however, requires four years of experience. She asked what does that mean? She said does that mean three projects per season, each one week in length, to meet one year's worth of experience. She said there needs to be some relief from the statutory experience requirements that are currently a precursor to taking the examinations. She said she is not challenging the need for the expertise or the need for the state to regulate the profession. She said she is, however, extremely concerned about the steps that must be taken for an individual to become eligible to sit for the soil classifier examination.

Ms. Spilman said there also must be clarification regarding when a soil classifier is required for a project. She said it seems that a certified wetland delineator should qualify for one of the statutory exemptions. She said the soil science related to wetland delineation constitutes only about one-third of the entire universe of soil science.

Ms. Spilman said if this statute went away, a program could be created to train wetland delineators. She said most wetland delineators attend a 40-hour course under the auspices of the Army Corps of Engineers. She said while some states require attendance at a 40-hour course on wetlands delineation, not every state requires passing an examination for certification. She said she believes certification should be based on passage of an examination. She said Minnesota tried that but could not get enough practitioners to pass the examination.

Ms. Spilman said the current education and experience requirements stand in the way of ensuring an adequate supply of future practitioners who are able to make the important decisions and provide the information that clients need in order to be good stewards of the environment.

In response to a question from Senator Bowman, Ms. Spilman said with respect to wetlands delineators, it is expected that an individual seeking such certification already has a related science degree. Technically, she said, that is not required. She said the 40-hour class covers how to do wetlands delineation. She said part of that deals with soil. She said there are a number of vendors that offer such training. She said in order to become a soil classifier, one has to complete an approved curriculum. She said the discussion this afternoon was whether or not a natural resource major constituted an approved curriculum. She said given past discussions with board members, it appears that a soil science major would be accepted, but it is not clear whether a minor in soil science would be considered an "approved curriculum."

Ms. Spilman said she has been able to hire individuals who have natural resource majors from NDSU. She said those natural resource majors may or may not be eligible to have only four years, as opposed to eight years, of additional field experience. She said that experience has to occur under a handful of North Dakota registered soil classifiers and has to focus on appropriate projects.

Ms. Spilman said the committee needs to ask how many individuals graduated with a degree in soil science from NDSU during the last five years. She said a significantly higher number of students graduate with a degree in

natural resources. She said if an individual has a degree in natural resources and that degree is not deemed appropriate by the board, that individual then has to have eight years of experience. She said she has employees who have managed to acquire three years of experience. She said if those individuals will have to obtain eight years of experience, the current soil classifiers will not be able to retire for quite a while. She said frankly, she does not believe it will be possible to obtain the requisite years' worth of experience under the current soil classifiers.

Ms. Spilman said the question is how does a profession repopulate itself. She said we have thousands of practicing engineers. She said each year hundreds of engineering graduates from the various institutions are eligible to sit for the first examination. She said they have four years and hundreds of opportunities to study under other licensed practical engineers. She said soil classifiers have to gain their experience under 16 individuals. She said there are ample opportunities to get engineers qualified. She said she cannot say the same thing about soil classifiers in North Dakota.

In response to a question from Representative Schmidt, Ms. Spilman said the soil classifiers currently have been able to meet the needs within this state. However, she said, when one looks at the age of the soil classifiers, there is an impending problem.

Chairman Schmidt said the committee has received copies of a letter ([Appendix L](#)) submitted by Mr. Bruce Bogenrief, General Manager, Clean Harbors Environmental Services, Inc., Sawyer Disposal Services, LLC. He said the letter is being included as part of the committee record.

### COMMITTEE DISCUSSION

Representative Trottier said he wondered if having a minor in a soils program would qualify an individual to be a professional soil classifier.

Mr. Edland said this past September or October, the professional soil classifiers association put on a soil judging course in Menoken. He said 50 to 60 students from five different colleges and universities participated in that. He said the students that seem to be of the most interest were attending NDSU or Dickinson State University. He said both those institutions have curricula that would enable one to become a soil classifier, after one had met the requirements for field experience. He said in reviewing the current law, the soil classifiers recognize that they need to define what constitutes "a year's experience."

In response to a question from Senator Erbele, Mr. Edland said if one has sufficient experience to pass the practical examination, then one has sufficient experience to to be a soil classifier. He said one needs enough experience to understand the natural resource and be able to interpret that resource, throughout the state.

Senator Erbele said if an individual does not pass the examination, presumably that individual did not have sufficient experience.

Mr. Edland said this past year, one individual from Wyoming took the examination three times before passing it, and an individual from Minnesota took it twice. He said their problem was not knowing and being able to interpret North Dakota soils.

Representative Schmidt said he wonders if an individual coming right out of college could pass the soil classifier's examination. Mr. Edland said no.

Representative Schmidt said if an individual cannot pass the examination right out of college because field experience is necessary, then in order to pass the examination one would have to acquire field experience, in whatever amount was necessary for that individual to pass the examination.

In response to a question from Senator Miller, Mr. Heidt said the examination covers a variety of things such as classifying soil by working with laboratory data. He said doing that is necessary to interpret soils. He said the examination also covers making soil interpretations for different uses based on laboratory data or descriptions of the soil. He said the examination requires identifying different landscape segments on paper and stating the types of soils that one would expect on those segments. He said the applicant also has to go into the field and describe several soils correctly and make interpretations of those soils. He said the applicant has to transect the landscape to determine the composition of the different soils and the properties of those soils.

In response to a question from Senator Miller, Mr. Edland said there is a fundamental examination that was originally written by North Dakotans. He said it was a state fundamental examination. He said that is now a national examination, administered regionally. He said our section is administered out of Madison, Wisconsin. He said the cost to take the practical examination is \$200. He said it is \$25 to take the examination a second time. He

said if one scores above 50 percent, one can retake the examination at any time thereafter. He said if one does not score above 50 percent, one must wait a year to retake the examination.

Mr. Heidt said one should be able to pass the fundamental examination right out of college.

Senator Luick said he wondered if it was possible for a person with experience in soil profiling to pass the examination without having any college courses.

Mr. Edland said he doubted if that would be possible. He said the practical examination is quite intense.

In response to a question from Representative Schmidt, Mr. Heidt said while one does not have to have certain qualifications to take the examination, one still has to meet the board's requirement for the course of study in order to become a registered soil classifier, as well as the years of practical field experience.

### **STAFF DIRECTIVES**

Senator Erbele said, at the next meeting, the committee should examine the bill draft rewriting the North Dakota Century Code chapter pertaining to soil classifiers.

Chairman Schmidt said the committee would also like to see a bill draft rewriting the North Dakota Century Code chapter pertaining to the Milk Marketing Board.

No further business appearing, Chairman Schmidt adjourned the meeting at 3:30 p.m.

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L. Anita Thomas  
Committee Counsel

ATTACH:12