

## REGISTRATION OF PROFESSIONAL SOIL CLASSIFIERS - BACKGROUND MEMORANDUM

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

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

When classifying a ponderosa pine or an Abert's squirrel, the entity is readily recognizable. When classifying soils, however, a challenge exists in that the nature and properties of soils can vary widely from one location to the next, and even within distances of a few yards.

Because of these challenges, a relatively new soil classifiers association brought forth, in 1973, legislation that would recognize soil classification as a profession and establish thresholds for entry into the profession. 1973 Senate Bill No. 2122 was ultimately codified as North Dakota Century Code Chapter 43-36. Forty years after its enactment, the chapter remains largely unchanged.

The profession is governed by the State Board of Registration for Professional Soil Classifiers. The board consists of three professional soil classifiers and two "at large" members, all of whom are to be appointed by the Governor. The term of office is five years.

The board is required to hold at least two regular meetings each year and is charged with administering its chapter. This includes limiting entry into the field of soil classification through the registration of professional soil classifiers and the certification of soil classifiers-in-training. Both require written applications and good character and reputation. Registration as a professional soil classifier requires "three references, one of which must be from a professional soil classifier having personal knowledge of the applicant's soil classifying experience." Certification as a soil classifier-in-training requires "three character witnesses."

An applicant for registration as a professional soil classifier must pass an examination in the principles and practice of soil classifying and demonstrate that the applicant:

1. Is a graduate of a soils curriculum approved by the board as satisfactory and with 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 and who holds a valid soil classifier-in-training certificate.
2. Is a person who has satisfactorily completed a soils curriculum not approved by the board and eight years or more 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.
3. Is a person who holds a valid soil classifier-in-training certificate with a specific record of four years or more of experience as a soil classifier-in-training of a grade and character which indicates to the board that the applicant is competent to practice soil classifying.
4. Is a person with experience of not less than four years of soil classification research or as a teacher of soils in a college or university offering an approved soils curriculum of four years or more, and a minimum of two years of soil classifying experience of a character and grade which indicates to the board that the applicant is competent to practice soil classifying. (see Section 43-36-12)

An applicant for certification as a soil classifier-in-training must pass an examination in the fundamentals of soil classifying and either be a graduate of a soils curriculum approved by the board or have completed a soils curriculum that is not approved by the board and demonstrate "a specific record of four years of soil classification experience of a grade and character satisfactory to the board." (see Section 43-36-13)

Once an individual is registered as a professional soil classifier or certified as a soil classifier-in-training, the board may reprimand the individual, suspend or revoke the individual's registration or certification, or refuse to renew such. The grounds for action of this sort are:

1. The practice of fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of soil classifying.
3. Any offense determined by the board to have a direct bearing upon a registrant's ability to serve the public as a professional soil classifier [ . . . ].
4. Violation of the code of ethics adopted and promulgated by the board. (see Section 43-36-21)

A professional soil classifier is 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 Section 43-36-01(3))

Section 43-36-24 provides that:

This chapter shall not be construed to prevent or affect:

1. The practice or offer to practice soil classifying by a person not a resident or having no established place of business in this state provided such person is legally qualified by the provisions of this chapter to practice soil classifying as defined herein in that person's own state which extends similar privileges to persons registered under this chapter provided such person shall make application accompanied by the appropriate application fee to the board in writing prior to that person's practicing or offering to practice soil classifying, may be granted a temporary permit for a definite period of time not to exceed one year to do a specific job provided, however, no right to practice soil classifying shall accrue to such applicant with respect to any other work not set forth in said permit.
2. The work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under subsection 1, provided such work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person holding a certificate of registration under this chapter or a person practicing lawfully under subsection 1.
3. The practice of any other legally recognized profession or trade.
4. 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.

An individual who violates the chapter is guilty of a Class B misdemeanor. The penalty for such a violation is 30 days' imprisonment, a \$1,500 fine, or both.

References in the legislative history for 2013 House Bill No. 1154 indicate a recognition that the statutory sections pertaining to professional soil classifiers and soil classifiers-in-training were in need of updating and clarification. Because the necessary effort was greater than the time available during the legislative session, House Bill No. 1154 provided for both a study of Chapter 43-36 and a complete rewrite of its provisions.