

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 2353\*  
Committee Substitute Favorable 6/19/08

Short Title: Irrigation Contractors Licensure/Fees.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LICENSURE OF IRRIGATION CONTRACTORS.

Whereas, North Carolina has been in an extreme drought, and water is our most basic and precious natural resource; and

Whereas, the efficient use of water is of utmost importance; and

Whereas, the North Carolina Green Industry Council has an annual economic impact of \$8.7 billion and offers employment to over 150,000 people in the State; and

Whereas, the proper design, installation, repair, and maintenance of landscape irrigation systems is critical to increase the efficiency of water use; and

Whereas, the U.S. Environmental Protection Agency has suggested that proper and efficient irrigation practices can reduce water consumption by at least 20%; and

Whereas, the North Carolina Green Industry Council and the Carolinas Irrigation Association recognize the need to require better and more efficient irrigation practices; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 89G.**

**"Irrigation Contractors.**

**"§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(2) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(3) Irrigation construction or contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

- 1           (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves,  
2 low voltage control wiring, and associated components installed for  
3 the delivery and application of water for the purpose of irrigation that  
4 are downstream of a potable water source, groundwater source, or grey  
5 water source and downstream of a backflow prevention assembly.  
6           (5) Person. – An individual, firm, partnership, association, corporation, or  
7 other legal entity.

8 **"§ 89G-2. License required.**

9       Except as otherwise provided in this Chapter, no person shall engage in the practice  
10 of irrigation construction or contracting, use the designation 'irrigation contractor,' or  
11 advertise using any title or description that implies licensure as an irrigation contractor  
12 unless the person is licensed as an irrigation contractor as provided by this Chapter. All  
13 irrigation construction or contracting performed by an individual, partnership,  
14 association, corporation, firm, or other group shall be under the direct supervision of an  
15 individual licensed by the Board under this Chapter.

16 **"§ 89G-3. Exemptions.**

17       The provisions in this Chapter shall not apply to:

- 18           (1) Any federal or State agency or any political subdivision performing  
19 irrigation construction or contracting work on public property.  
20           (2) Any property owner who performs irrigation construction or  
21 contracting work on his or her own property.  
22           (3) A landscape architect registered under Chapter 89A of the General  
23 Statutes.  
24           (4) A professional engineer licensed under Chapter 89C of the General  
25 Statutes.  
26           (5) Any irrigation construction or contracting work where the price of all  
27 contracts for labor, material, and other items for a given jobsite for 12  
28 consecutive months is less than one thousand five hundred dollars  
29 (\$1,500).  
30           (6) Any person performing irrigation construction or contracting work for  
31 temporary irrigation to establish vegetative cover for erosion control.  
32           (7) Any person performing irrigation construction or contracting work to  
33 control dust on commercial construction sites or mining operations.  
34           (8) Any person performing irrigation construction or contracting work for  
35 use in agricultural production, farming, or ranching, including land  
36 application of animal waste water.  
37           (9) Any person performing irrigation construction or contracting work for  
38 use in commercial sod production.  
39           (10) Any person performing irrigation construction or contracting work for  
40 use in the commercial production of horticultural crops, including  
41 nursery and greenhouse operators.  
42           (11) A general contractor licensed under Article 1 of Chapter 87 of the  
43 General Statutes.

- 1           (12) A wastewater contractor certified under Article 5 of Chapter 90A of  
2           the General Statutes who performs only the construction of or repair to  
3           a wastewater dispersal system.
- 4           (13) A public utility contractor licensed under Article 1 of Chapter 87 of  
5           the General Statutes.
- 6           (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the  
7           General Statutes who performs only the following work: installation,  
8           repairs, or maintenance of water mains, water taps, service lines, water  
9           meters, or backflow prevention assemblies supplying water for  
10           irrigation systems; or repairs to an irrigation system.

11 **"§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.**

12       (a) Composition and Terms. – The North Carolina Irrigation Contractors'  
13 Licensing Board is created. The Board shall consist of nine members who shall serve  
14 staggered terms. The initial Board shall be selected on or before October 1, 2008, as  
15 follows:

- 16           (1) The Commissioner of Agriculture, upon the recommendation of the  
17           Carolinas Irrigation Association, shall appoint two irrigation  
18           contractors, one to serve a one-year term and one to serve a three-year  
19           term.
- 20           (2) The General Assembly, upon the recommendation of the Speaker of  
21           the House of Representatives and pursuant to recommendations from  
22           the North Carolina Green Industry Council, shall appoint two  
23           members, one who is a registered landscape contractor in good  
24           standing with the North Carolina Landscape Contractors Registration  
25           Board to serve a one-year term and one who is an irrigation contractor  
26           to serve a three-year term.
- 27           (3) The General Assembly, upon the recommendation of the President Pro  
28           Tempore of the Senate, shall appoint two irrigation contractors, one to  
29           serve a one-year term and one to serve a two-year term.
- 30           (4) The President of The University of North Carolina System shall  
31           appoint one member from within the ranks of the land grant university  
32           community who is knowledgeable in irrigation methods and practices  
33           to serve a three-year term. The position is open to both current  
34           employees of The University of North Carolina System and persons  
35           who have earned emeritus status with The University of North  
36           Carolina System.
- 37           (5) The Board of Directors of the North Carolina Chapter of the American  
38           Society of Landscape Architects shall appoint one member who is a  
39           registered landscape architect to serve a two-year term.
- 40           (6) The Governor shall appoint one public member to serve a two-year  
41           term.

42       Upon the expiration of the terms of the initial Board members, each member shall be  
43 appointed by the appointing authorities designated in subdivisions (1) through (6) of this

1 subsection for a three-year term and shall serve until a successor is appointed and  
2 qualified. No member may serve more than two consecutive full terms.

3 (b) Qualifications. – Members of the Board shall be residents of this State. The  
4 irrigation contractor members shall meet the requirements for licensure under this  
5 Chapter and remain in good standing with the Board during their terms. The public  
6 member of the Board shall not be: (i) trained or experienced in irrigation construction or  
7 contracting; (ii) an agent or employee of a person engaged in the practice of irrigation  
8 construction or contracting; or (iii) the spouse of an individual who may not serve as a  
9 public member of the Board.

10 (c) Vacancies. – Any vacancy on the Board created by death, resignation, or  
11 otherwise shall be filled in the same manner as the original appointment, except that all  
12 unexpired terms of Board members appointed by the General Assembly shall be filled  
13 in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder  
14 of the unexpired term and until their successors are appointed and qualified.

15 (d) Removal. – The Board may remove any of its members for neglect of duty,  
16 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings  
17 in the member's capacity as a licensed irrigation contractor shall be disqualified from  
18 participating in the official business of the Board until the charges have been resolved.

19 (e) Officers and Meetings. – The Board shall elect annually a chair and other  
20 officers as it deems necessary to carry out the purposes of this Chapter and shall hold  
21 meetings at least twice a year. A majority of the Board shall constitute a quorum.

22 (f) Compensation. – Each member of the Board may receive per diem and  
23 reimbursement for travel and subsistence as set forth in G.S. 93B-5.

24 (g) Assistance. – The Board shall be entitled to the services of the Attorney  
25 General in connection with the affairs of the Board or may, in its discretion, employ an  
26 attorney to assist or represent it in the enforcement of this Chapter.

27 **§ 89G-5. Powers and duties.**

28 The Board shall have the following powers and duties:

- 29 (1) To administer and enforce the provisions of this Chapter.
- 30 (2) To adopt, amend, or repeal rules to carry out the provisions of this  
31 Chapter.
- 32 (3) To examine and determine the qualifications and fitness of applicants  
33 for licensure and licensure renewal.
- 34 (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- 35 (5) To reprimand or otherwise discipline licensees under this Chapter.
- 36 (6) To receive and investigate complaints from members of the public.
- 37 (7) To conduct investigations to determine whether violations of this  
38 Chapter exist or constitute grounds for disciplinary action against  
39 licensees under this Chapter.
- 40 (8) To conduct administrative hearings in accordance with Chapter 150B  
41 of the General Statutes.
- 42 (9) To seek injunctive relief through any court of competent jurisdiction  
43 for violations of this Chapter.

- 1           (10) To collect fees required by G.S. 89G-10 and other monies permitted by  
2 law to be paid to the Board.
- 3           (11) To require licensees to file and maintain an adequate surety bond.
- 4           (12) To establish and approve continuing educational requirements for  
5 persons licensed under this Chapter.
- 6           (13) To employ a secretary-treasurer and any other clerical personnel the  
7 Board deems necessary to carry out the provisions of this Chapter and  
8 to fix compensation for employees.
- 9           (14) To maintain a record of all proceedings conducted by the Board and  
10 make available to licensees and other concerned parties an annual  
11 report of all Board actions.
- 12           (15) To adopt and publish a code of professional conduct and practice for  
13 all persons licensed under this Chapter. The code shall establish  
14 minimum standards for water conservation in the practice of irrigation  
15 construction and contracting.
- 16           (16) To publish a list of irrigation best management practices to be  
17 followed by licensed irrigation contractors.
- 18           (17) To adopt a seal containing the name of the Board for use on licenses  
19 and official reports issued by the Board.

20 **"§ 89G-6. Application; qualifications; examination; issuance.**

21           (a) Upon application to the Board and the payment of the required fees, an  
22 applicant may be licensed under this Chapter as an irrigation contractor if the applicant  
23 submits evidence that demonstrates his or her qualifications as prescribed in rules  
24 adopted by the Board and meets all of the following qualifications:

- 25           (1) Is at least 18 years of age.
- 26           (2) Is of good moral character as determined by the Board.
- 27           (3) Has at least three years of experience in irrigation construction or  
28 contracting or the educational equivalent. Two years of educational  
29 training in irrigation construction or contracting shall be the equivalent  
30 of one year of experience.
- 31           (4) Files with the Board and maintains a corporate surety bond executed  
32 by a company authorized to do business in this State or an irrevocable  
33 letter of credit issued by an insured institution. The surety bond or the  
34 letter of credit shall be in the amount of ten thousand dollars  
35 (\$10,000). The surety bond or letter of credit shall be approved by the  
36 Board as to form and shall be conditioned upon the obligor faithfully  
37 conforming to and abiding by the provisions of this Chapter. Any  
38 person claiming to be injured by an act of a licensed irrigation  
39 contractor that constitutes a violation of this Chapter may institute an  
40 action to recover against the licensee and the surety.

41           (b) If the application is satisfactory to the Board, the applicant shall be required  
42 to pass an examination administered by the Board. The Board shall establish the scope  
43 and subject matter of the examination, and an examination shall be held at least twice a

1 year at a time and place to be determined by the Board. The examination, at a minimum,  
2 shall test the applicant's understanding of the following:

- 3 (1) Efficiency of water use and conservation in the practice of irrigation
- 4 construction and contracting.
- 5 (2) Proper methods of irrigation construction.
- 6 (3) Proper methods for irrigation installation.
- 7 (4) Basic business skills.

8 (c) When the Board determines that an applicant has met all the requirements for  
9 licensure, the Board shall issue a license to the applicant.

10 **"§ 89G-7. Use of seal; posting license.**

11 (a) Upon licensure by the Board, each irrigation contractor shall obtain a seal of  
12 the design authorized by the Board and bearing the name of the licensee, the number of  
13 the license, and the legend 'N.C. Licensed Irrigation Contractor.' An irrigation  
14 contractor may use the seal only while the license is valid.

15 (b) Every irrigation contractor issued a license under this Chapter shall display  
16 the license conspicuously in the contractor's place of business.

17 **"§ 89G-8. Reciprocity.**

18 The Board may issue a license, without examination, to any person who is an  
19 irrigation contractor licensed, certified, or registered in another state or country if the  
20 requirements for licensure, certification, or registration in the other state or country are  
21 substantially equivalent to the requirements for licensure in this State.

22 **"§ 89G-9. License renewal and continuing education.**

23 (a) Every license issued under this Chapter shall be renewed on or before  
24 December 31 of each year. Any person who desires to continue to practice shall apply  
25 for license renewal and shall submit the required fees. Licenses that are not renewed  
26 shall be automatically revoked. A license may be renewed at any time within one year  
27 after its expiration, if: (i) the applicant pays the required renewal fee and late renewal  
28 fee; (ii) the Board finds that the applicant has not used the license in a manner  
29 inconsistent with the provisions of this Chapter or engaged in the practice of irrigation  
30 construction or contracting after notice of revocation; and (iii) the applicant is otherwise  
31 eligible for licensure under the provisions of this Chapter. When necessary, the Board  
32 may require a licensee to demonstrate continued competence as a condition of license  
33 renewal.

34 (b) As a condition of license renewal, a licensee shall meet continuing education  
35 requirements set by the Board. Each licensee shall complete 10 continuing education  
36 units per year. Failure to obtain continuing education units shall result in the forfeiture  
37 of a license. Upon forfeiture, a person shall be required to submit a new application and  
38 retake the examination as provided in this Chapter.

39 **"§ 89G-10. Expenses and fees.**

40 (a) The Board may impose the following fees not to exceed the amounts listed  
41 below:

- |        |                        |                 |
|--------|------------------------|-----------------|
| 42 (1) | <u>Application fee</u> | <u>\$100.00</u> |
| 43 (2) | <u>Examination fee</u> | <u>200.00</u>   |
| 44 (3) | <u>License renewal</u> | <u>100.00</u>   |

1	(4)	<u>Late renewal fee</u>	<u>50.00</u>
2	(5)	<u>License by reciprocity</u>	<u>250.00</u>
3	(6)	<u>Corporate license</u>	<u>100.00</u>
4	(7)	<u>Duplicate license</u>	<u>25.00.</u>

5 (b) When the Board uses a testing service for the preparation, administration, or  
6 grading of examinations, the Board may charge the applicant the actual cost of the  
7 examination services.

8 **"§ 89G-11. Disciplinary action.**

9 The Board may deny, restrict, suspend, or revoke a license or refuse to issue or  
10 renew a license if a licensee or applicant:

- 11 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or  
12 attempting to obtain a license or the renewal of a license.
- 13 (2) Practices or attempts to practice irrigation construction or contracting  
14 by fraudulent misrepresentation.
- 15 (3) Commits an act of gross malpractice or incompetence as determined  
16 by the Board.
- 17 (4) Has been convicted of or pled guilty or no contest to a crime that  
18 indicates that the person is unfit or incompetent to practice as an  
19 irrigation contractor or that indicates that the person has deceived or  
20 defrauded the public.
- 21 (5) Has been declared incompetent by a court of competent jurisdiction.
- 22 (6) Has willfully violated any provision in this Chapter or any rules  
23 adopted by the Board.
- 24 (7) Uses or attempts to use the seal in a fraudulent or unauthorized  
25 manner.
- 26 (8) Fails to file the required surety bond or letter of credit or to keep the  
27 bond or letter of credit in force.

28 **"§ 89G-12. Civil penalties.**

29 (a) In addition to taking any of the actions permitted under G.S. 89G-11, the  
30 Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each  
31 violation of any section of this Chapter or the violation of any rules adopted by the  
32 Board. The clear proceeds of any civil penalty assessed under this section shall be  
33 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

34 (b) Before imposing and assessing a civil penalty and fixing the amount of the  
35 penalty, the Board shall, as a part of its deliberations, take into consideration the  
36 following factors:

- 37 (1) The nature, gravity, and persistence of the particular violation.
- 38 (2) The appropriateness of the imposition of a civil penalty when  
39 considered alone or in combination with other punishment.
- 40 (3) Whether the violation was willful and malicious.
- 41 (4) Any other factors that would tend to mitigate or aggravate the violation  
42 found to exist.

43 (c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil  
44 penalties for violations of this Chapter and rules adopted by the Board.

1 **"§ 89G-13. Injunction to prevent violation; notification of complaints.**

2 (a) If the Board finds that a person who does not have a license issued under this  
3 Chapter is engaging in the practice of irrigation construction or contracting, the Board  
4 may appear in its own name in superior court in actions for injunctive relief to prevent  
5 any person from violating the provisions of this Chapter or rules adopted by the Board.

6 (b) A licensed irrigation contractor shall notify the Board by registered mail of  
7 any complaints filed against the contractor within 30 days from the date the complaint  
8 was filed."

9 **SECTION 2.** Any person who has obtained Certified Irrigation Contractor  
10 (CIC) or Certified Irrigation Designer (CID) status through The Irrigation Association  
11 may be issued an irrigation contractor's license under Chapter 89G of the General  
12 Statutes, as enacted by Section 1 of this act, without the requirement of examination  
13 after successfully applying for and meeting all other requirements and qualifications for  
14 licensure, provided the person submits a valid application for licensure to the Board  
15 within 180 days of the date this act becomes effective.

16 **SECTION 3.** Any person who is a registered landscape contractor under  
17 Chapter 89D of the General Statutes or a licensed plumbing contractor under Article 2  
18 of Chapter 87 of the General Statutes on the date this act becomes effective may be  
19 issued an irrigation contractor's license under Chapter 89G of the General Statutes, as  
20 enacted by Section 1 of this act, without the requirement of examination after  
21 successfully applying for and meeting all other requirements and qualifications for  
22 licensure, provided the person submits a valid application for licensure to the Board  
23 within 180 days of the date this act becomes effective.

24 **SECTION 4.** The Board must annually review the fees set out in  
25 G.S. 89G-10 of this act to determine whether these fees reflect the actual cost of  
26 administering this act and seek legislative changes to the fees if necessary.

27 **SECTION 5.** G.S. 89G-4, as enacted in Section 1 of this act, becomes  
28 effective October 1, 2008. The remainder of this act becomes effective January 1, 2009.