

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 2353*
Committee Substitute Favorable 6/19/08
Senate Finance Committee Substitute Adopted 7/14/08

Short Title: Irrigation Contractors Licensure/Fees. (Public)

Sponsors:

Referred to:

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE LICENSURE OF IRRIGATION CONTRACTORS.

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

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

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

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

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

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

15 Now, therefore,

16 The General Assembly of North Carolina enacts:

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

19 **"Chapter 89G.**

20 **"Irrigation Contractors.**

21 **"§ 89G-1. Definitions.**

22 The following definitions apply in this Chapter:

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

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

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

1 (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves,
2 control wiring of 30 volts or less, and associated components installed
3 for the delivery and application of water for the purpose of irrigation
4 that are downstream of a well, pond or other surface water, potable
5 water or groundwater source, or grey water source and downstream of
6 a backflow prevention assembly. Surface water, potable water or
7 groundwater sources, water taps, utility piping, water service lines,
8 water meters, backflow prevention assemblies, stormwater systems
9 that service only the interior of a structure, and sanitary drainage
10 systems are not part of an irrigation system.

11 (5) Person. – An individual, firm, partnership, association, corporation, or
12 other legal entity.

13 **"§ 89G-2. License required.**

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

21 **"§ 89G-3. Exemptions.**

22 The provisions in this Chapter shall not apply to:

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

- 1 (10) Any person performing irrigation construction or contracting work for
2 use in the commercial production of horticultural crops, including
3 nursery and greenhouse operators.
- 4 (11) A general contractor licensed under Article 1 of Chapter 87 of the
5 General Statutes.
- 6 (12) A wastewater contractor certified under Article 5 of Chapter 90A of
7 the General Statutes who performs only the construction of or repair to
8 a wastewater dispersal system.
- 9 (13) A public utility contractor licensed under Article 1 of Chapter 87 of
10 the General Statutes.
- 11 (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the
12 General Statutes who performs only the following work: installation,
13 repairs, or maintenance of water mains, water taps, service lines, water
14 meters, or backflow prevention assemblies supplying water for
15 irrigation systems; or repairs to an irrigation system.
- 16 (15) Any person performing irrigation construction or contracting work for
17 a golf course.
- 18 (16) Any person maintaining or repairing an irrigation system owned by the
19 homeowners association of a planned community and located within
20 the planned community's common elements as defined in
21 G.S. 47F-1-103.

22 **"§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.**

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

- 27 (1) The Commissioner of Agriculture, upon the recommendation of the
28 Carolinas Irrigation Association, shall appoint two irrigation
29 contractors, one to serve a one-year term and one to serve a three-year
30 term.
- 31 (2) The General Assembly, upon the recommendation of the Speaker of
32 the House of Representatives and pursuant to recommendations from
33 the North Carolina Green Industry Council, shall appoint two
34 members, one who is a registered landscape contractor in good
35 standing with the North Carolina Landscape Contractors Registration
36 Board to serve a one-year term and one who is an irrigation contractor
37 to serve a three-year term.
- 38 (3) The General Assembly, upon the recommendation of the President Pro
39 Tempore of the Senate, shall appoint two irrigation contractors, one to
40 serve a one-year term and one to serve a two-year term.
- 41 (4) The President of The University of North Carolina System shall
42 appoint one member from within the ranks of the land grant university
43 community who is knowledgeable in irrigation methods and practices
44 to serve a three-year term. The position is open to both current

1 employees of The University of North Carolina System and persons
2 who have earned emeritus status with The University of North
3 Carolina System.

4 (5) The Board of Directors of the North Carolina Chapter of the American
5 Society of Landscape Architects shall appoint one member who is a
6 registered landscape architect to serve a two-year term.

7 (6) The Governor shall appoint one public member to serve a two-year
8 term.

9 Upon the expiration of the terms of the initial Board members, each member shall be
10 appointed by the appointing authorities designated in subdivisions (1) through (6) of this
11 subsection for a three-year term and shall serve until a successor is appointed and
12 qualified. No member may serve more than two consecutive full terms.

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

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

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

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

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

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

37 **"§ 89G-5. Powers and duties.**

38 The Board shall have the following powers and duties:

39 (1) To administer and enforce the provisions of this Chapter.

40 (2) To adopt, amend, or repeal rules to carry out the provisions of this
41 Chapter.

42 (3) To examine and determine the qualifications and fitness of applicants
43 for licensure and licensure renewal.

44 (4) To issue, renew, deny, restrict, suspend, or revoke licenses.

- 1 (5) To reprimand or otherwise discipline licensees under this Chapter.
- 2 (6) To receive and investigate complaints from members of the public.
- 3 (7) To conduct investigations to determine whether violations of this
4 Chapter exist or constitute grounds for disciplinary action against
5 licensees under this Chapter.
- 6 (8) To conduct administrative hearings in accordance with Chapter 150B
7 of the General Statutes.
- 8 (9) To seek injunctive relief through any court of competent jurisdiction
9 for violations of this Chapter.
- 10 (10) To collect fees required by G.S. 89G-10 and other monies permitted by
11 law to be paid to the Board.
- 12 (11) To require licensees to file and maintain an adequate surety bond.
- 13 (12) To establish and approve continuing educational requirements for
14 persons licensed under this Chapter.
- 15 (13) To employ a secretary-treasurer and any other clerical personnel the
16 Board deems necessary to carry out the provisions of this Chapter and
17 to fix compensation for employees.
- 18 (14) To maintain a record of all proceedings conducted by the Board and
19 make available to licensees and other concerned parties an annual
20 report of all Board actions.
- 21 (15) To adopt and publish a code of professional conduct and practice for
22 all persons licensed under this Chapter. The code shall establish
23 minimum standards for water conservation in the practice of irrigation
24 construction and contracting.
- 25 (16) To publish a list of irrigation best management practices to be
26 followed by licensed irrigation contractors.
- 27 (17) To adopt a seal containing the name of the Board for use on licenses
28 and official reports issued by the Board.

29 **"§ 89G-6. Application; qualifications; examination; issuance.**

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

- 34 (1) Is at least 18 years of age.
- 35 (2) Is of good moral character as determined by the Board.
- 36 (3) Has at least three years of experience in irrigation construction or
37 contracting or the educational equivalent. Two years of educational
38 training in irrigation construction or contracting shall be the equivalent
39 of one year of experience.
- 40 (4) Files with the Board and maintains a corporate surety bond executed
41 by a company authorized to do business in this State or an irrevocable
42 letter of credit issued by an insured institution. The surety bond or the
43 letter of credit shall be in the amount of ten thousand dollars
44 (\$10,000). The surety bond or letter of credit shall be approved by the

1 Board as to form and shall be conditioned upon the obligor's faithfully
2 conforming to and abiding by the provisions of this Chapter. Any
3 person claiming to be injured by an act of a licensed irrigation
4 contractor that constitutes a violation of this Chapter may institute an
5 action to recover against the licensee and the surety.

6 (b) If the application is satisfactory to the Board, the applicant shall be required
7 to pass an examination administered by the Board. The Board shall establish the scope
8 and subject matter of the examination, and an examination shall be held at least twice a
9 year at a time and place to be determined by the Board. The examination, at a minimum,
10 shall test the applicant's understanding of the following:

11 (1) Efficiency of water use and conservation in the practice of irrigation
12 construction and contracting.

13 (2) Proper methods of irrigation construction.

14 (3) Proper methods for irrigation installation.

15 (4) Basic business skills.

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

18 **"§ 89G-7. Use of seal; posting license.**

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

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

25 **"§ 89G-8. Reciprocity.**

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

30 **"§ 89G-9. License renewal and continuing education.**

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

42 (b) As a condition of license renewal, a licensee shall meet continuing education
43 requirements set by the Board. Each licensee shall complete 10 continuing education
44 units per year. Failure to obtain continuing education units shall result in the forfeiture

1 of a license. Upon forfeiture, a person shall be required to submit a new application and
 2 retake the examination as provided in this Chapter.

3 **"§ 89G-10. Expenses and fees.**

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

6	(1)	<u>Application fee</u>	<u>\$100.00</u>
7	(2)	<u>Examination fee</u>	<u>200.00</u>
8	(3)	<u>License renewal</u>	<u>100.00</u>
9	(4)	<u>Late renewal fee</u>	<u>50.00</u>
10	(5)	<u>License by reciprocity</u>	<u>250.00</u>
11	(6)	<u>Corporate license</u>	<u>100.00</u>
12	(7)	<u>Duplicate license</u>	<u>25.00.</u>

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

16 **"§ 89G-11. Disciplinary action.**

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

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

36 **"§ 89G-12. Civil penalties.**

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

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

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

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

9 "**§ 89G-13. Injunction to prevent violation; notification of complaints.**

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

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

17 **SECTION 2.** Any person who has obtained Certified Irrigation Contractor
18 (CIC) or Certified Irrigation Designer (CID) status through The Irrigation Association
19 may be issued an irrigation contractor's license under Chapter 89G of the General
20 Statutes, as enacted by Section 1 of this act, without the requirement of examination
21 after 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 3.** Any person who is a registered landscape contractor under
25 Chapter 89D of the General Statutes or a licensed plumbing contractor under Article 2
26 of Chapter 87 of the General Statutes on the date this act becomes effective may be
27 issued an irrigation contractor's license under Chapter 89G of the General Statutes, as
28 enacted by Section 1 of this act, without the requirement of examination after
29 successfully applying for and meeting all other requirements and qualifications for
30 licensure, provided the person submits a valid application for licensure to the Board
31 within 180 days of the date this act becomes effective.

32 **SECTION 4.** Any person who can document 10 years in business as an
33 irrigation contractor as of the date this act becomes effective, can document competency
34 in the practice of irrigation contracting, as determined by the Board, and meets all other
35 requirements and qualifications for licensure may be issued an irrigation contractor's
36 license under Chapter 89G of the General Statutes, as enacted by Section 1 of this act,
37 without the requirement of examination, provided that the person submits an application
38 for licensure to the Board within 180 days of the date this act becomes effective.

39 **SECTION 5.** The Board must annually review the fees set out in
40 G.S. 89G-10 of this act to determine whether these fees reflect the actual cost of
41 administering this act and seek legislative changes to the fees if necessary.

42 **SECTION 6.** G.S. 89G-4, as enacted in Section 1 of this act, becomes
43 effective October 1, 2008. The remainder of this act becomes effective January 1, 2009,

1 and the exemption provided in G.S. 89G-3(16) applies to irrigation systems installed on
2 or before that date.