

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 405
Commerce Committee Substitute Adopted 4/28/11
Finance Committee Substitute Adopted 5/18/11
House Committee Substitute Favorable 5/31/12

Short Title: Amend Irrigation Contractors' Licensing Laws.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, TO PROVIDE FOR LICENSURE OF EXPERIENCED IRRIGATION CONTRACTORS WITHOUT THE REQUIREMENT OF AN EXAMINATION WHEN CERTAIN CONDITIONS ARE MET, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 reads as rewritten:

"§ 89G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.
- (1a) Business entity. – A person that is not an individual.
- (1b) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
- (1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.
- (1f) Foreign partnership. – One of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.
- (3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.
- (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for



1 the delivery and application of water for the purpose of irrigation that are
2 downstream of a well, pond or other surface water, potable water or
3 groundwater source, or grey water source and downstream of a backflow
4 prevention assembly. Surface water, potable water or groundwater sources,
5 water taps, utility piping, water service lines, water meters, backflow
6 prevention assemblies, stormwater systems that service only the interior of a
7 structure, and sanitary drainage systems are not part of an irrigation system.

8 (4a) Nonresident individual. – An individual who is not a resident of this State.

9 (5) Person. – An individual, firm, partnership, association, corporation, or other
10 legal entity."

11 **SECTION 2.** G.S. 89G-3 reads as rewritten:

12 **"§ 89G-3. Exemptions.**

13 The provisions in this Chapter shall not apply to:

- 14 (1) Any federal or State agency or any political subdivision performing
15 irrigation construction or irrigation contracting work on public
16 ~~property~~ property and using its own employees.
- 17 (2) Any property owner who performs irrigation construction or irrigation
18 contracting work on his or her own property.
- 19 (3) A landscape architect registered under Chapter 89A of the General Statutes.
- 20 (4) A professional engineer licensed under Chapter 89C of the General Statutes.
- 21 (5) Any irrigation construction or irrigation contracting work where the price of
22 all contracts for labor, material, and other items for a given jobsite is less
23 than two thousand five hundred dollars (\$2,500).
- 24 (6) Any person performing irrigation construction or irrigation contracting work
25 for temporary irrigation to establish vegetative cover for erosion control.
- 26 (7) Any person performing irrigation construction or irrigation contracting work
27 to control dust on commercial construction sites or mining operations.
- 28 (8) Any person performing irrigation construction or irrigation contracting work
29 for use in agricultural production, farming, or ranching, including land
30 application of animal wastewater.
- 31 (9) Any person performing irrigation construction or irrigation contracting work
32 for use in commercial sod production.
- 33 (10) Any person performing irrigation construction or irrigation contracting work
34 for use in the commercial production of horticultural crops, including
35 nursery and greenhouse operators.
- 36 (11) A general contractor licensed under Article 1 of Chapter 87 of the General
37 ~~Statutes.~~ Statutes who possesses a classification under G.S. 87-10(b) as a
38 building contractor, a residential contractor, or a public utilities contractor
39 when the contractor uses the contractor's own employees to perform
40 irrigation construction or irrigation contracting work. A public utilities
41 contractor exempted by this subdivision may perform only the activities
42 described in G.S. 87-10(b)(3)a.
- 43 (12) A wastewater contractor certified under Article 5 of Chapter 90A of the
44 General Statutes who performs only the construction of or repair to a
45 wastewater dispersal system.
- 46 (13) ~~A public utility contractor licensed under Article 1 of Chapter 87 of the~~
47 ~~General Statutes.~~
- 48 (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General
49 Statutes who performs only the following work: installation, repairs, or
50 maintenance of water mains, water taps, service lines, water meters, or

1 backflow prevention assemblies supplying water for irrigation systems; or
2 repairs to an irrigation system.

3 (15) Any person performing irrigation construction or irrigation contracting work
4 for a golf course.

5 (16) Any ~~person~~ full-time employee of a homeowners association maintaining or
6 repairing an irrigation system owned by the homeowners association of a
7 planned community and located within the planned community's common
8 elements as defined in G.S. 47F-1-103."

9 **SECTION 3.** G.S. 89G-5(11) reads as rewritten:

10 **"§ 89G-5. Powers and duties.**

11 The Board shall have the following powers and duties:

12 ...

13 (11) To require licensees to file and maintain an adequate surety ~~bond~~ bond or
14 letter of credit.

15"

16 **SECTION 4.** Chapter 89G of the General Statutes is amended by adding a new
17 section to read:

18 **"§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

19 (a) The Board may issue a license in the name of a business entity if the business entity
20 pays the license fee required by G.S. 89G-10 and one of the following applies:

21 (1) For a corporation, one or more officers or full-time employees empowered to
22 act for the corporation are individuals licensed under this Chapter and only
23 the individuals licensed under this Chapter execute contracts for irrigation
24 construction and irrigation contracting.

25 (2) For a limited liability company, one or more managers or executives as
26 defined in G.S. 57C-1-03 or full-time employees empowered to act for the
27 company are individuals licensed under this Chapter and only the individuals
28 licensed under this Chapter execute contracts for irrigation construction and
29 irrigation contracting.

30 (3) For a partnership, one or more general partners or full-time employees
31 empowered to act for the partnership are individuals licensed under this
32 Chapter and only the individuals licensed under this Chapter execute
33 contracts for irrigation construction and irrigation contracting.

34 (4) For a business entity using an assumed name or designated trade name, the
35 owner or one or more full-time employees empowered to act for the owner
36 are individuals licensed under this Chapter and only the individuals licensed
37 under this Chapter execute contracts for irrigation construction and irrigation
38 contracting.

39 (b) The Board may issue a license to a nonresident individual who meets the
40 requirements for licensure under this Chapter. A nonresident individual licensed under this
41 Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection
42 (a) of this section.

43 (c) The Board may issue a license in the name of a foreign entity if the following apply:

44 (1) For a foreign corporation, the corporation has obtained a certificate of
45 authority from the Secretary of State pursuant to Article 15 of Chapter 55 of
46 the General Statutes and complies with the requirements of subdivision (1)
47 of subsection (a) of this section.

48 (2) For a foreign limited liability company, the company has obtained a
49 certificate of authority from the Secretary of State pursuant to Article 7 of
50 Chapter 57C of the General Statutes and complies with the requirements of
51 subdivision (2) of subsection (a) of this section.

1 (3) For a foreign partnership, the partnership complies with the requirements of
2 subdivision (3) of subsection (a) of this section.

3 (d) When the Board issues a license to a business entity or a foreign entity under this
4 section, the Board shall indicate on the license the name and license number of the individual
5 licensee required under subsection (a) of this section.

6 (e) The individual licensee required under subsection (a) of this section shall exercise
7 direct supervision over a contract by a business entity or a foreign entity for irrigation
8 construction or irrigation contracting until the contract is completed.

9 (f) An individual licensed under this Chapter may not execute a contract for irrigation
10 construction or irrigation contracting on behalf of a business entity or a foreign entity unless the
11 business entity or foreign entity is licensed under this section.

12 (g) All of the following shall apply if the individual licensee required under subsection
13 (a) of this section ceases to be an officer, full-time employee, manager, executive, general
14 partner, or owner of the business entity or foreign entity licensed under this section:

15 (1) The business entity or foreign entity shall provide written notice to the Board
16 pursuant to rules adopted by the Board.

17 (2) The business entity or foreign entity must satisfy the requirements of
18 subsection (a) of this section within 90 days of the effective date of the
19 notice required under subdivision (1) of this subsection.

20 The Board shall suspend the license of a business entity or foreign entity licensed under this
21 section that fails after 90 days to satisfy the requirements of subsection (a) of this section."

22 **SECTION 5.** G.S. 89G-9 reads as rewritten:

23 "**§ 89G-9. License renewal and continuing education.**

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

34 (b) As a condition of license renewal, ~~a~~an individual licensee shall meet continuing
35 education requirements set by the Board. Each individual licensee shall complete 10 continuing
36 education units per year. ~~Failure to obtain continuing education units shall result in the~~
37 ~~forfeiture of a license.~~

38 (c) The Board shall suspend an individual licensee's license for 60 days for failure to
39 obtain continuing education units required by subsection (b) of this section. The Board shall
40 suspend a business entity's or a foreign entity's license for 60 days for failure by the individual
41 licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by
42 subsection (b) of this section. Upon completion of the required continuing education and
43 payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual
44 licensee to meet the education requirements, to request a reinstatement of the license, or to pay
45 the reinstatement fee within the time provided shall result in the revocation of the license. Upon
46 ~~forfeiture, a person~~revocation, an individual shall be required to submit a new application and
47 retake the examination as provided in this Chapter."

48 **SECTION 6.** G.S. 89G-10(a) reads as rewritten:

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

- | | |
|-------------------------------------|----------|
| 50 (1) Application fee | \$100.00 |
| 51 (2) Examination fee | 200.00 |

1	(3)	License <u>Individual license fee and individual</u>	
2		<u>license renewal fee</u>	100.00
3	(3a)	<u>Business entity or foreign entity license fee</u>	
4		<u>and business entity or foreign entity license</u>	
5		<u>renewal fee</u>	<u>100.00</u>
6	(4)	Late renewal fee	50.00
7	(5)	License by reciprocity	250.00
8	(6)	Corporate license <u>Reinstatement fee</u>	100.00 <u>250.00</u>
9	(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"§ 89G-11. Disciplinary action.

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

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

(b) The Board may assess costs, including attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

SECTION 9.(a) Any person who can document 10 years in business as an irrigation contractor as of January 1, 2009, can document competency in the practice of irrigation construction or irrigation contracting, as determined by the North Carolina Irrigation Contractors' Licensing Board, and meets all other requirements and qualifications for licensure may be issued an irrigation contractor's license under Chapter 89G of the General Statutes, without the requirement of examination, provided that the person submits an application for licensure to the Board prior to October 1, 2012.

SECTION 9.(b) The North Carolina Irrigation Contractors' Licensing Board shall notify the North Carolina Cooperative Extension of the provision for licensure of experienced irrigation contractors without the requirement of an examination as provided in Section 9(a) of this act as quickly as practicable upon the effective date of this section.

SECTION 10. Sections 9(a) and 9(b) of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2012.