

Chapter 89G.

Irrigation Contractors.

§ 89G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.
- (1a) Business entity. – A corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity that is not an individual or a foreign entity.
- (1b) Foreign corporation. – Defined in G.S. 55-1-40.
- (1c) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (1d) Foreign limited liability company. – Defined in G.S. 57C-1-03.
- (1e) 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 the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.
- (4a) Nonresident individual. – An individual who is not a resident of this State.
- (5) Person. – An individual, firm, partnership, association, corporation, or other legal entity. (2008-177, s. 1; 2013-383, s. 1.)

§ 89G-2. License required.

Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or irrigation contracting, use the designation "irrigation contractor," or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor as provided by this Chapter. All irrigation construction or irrigation contracting performed by an individual, partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter. (2008-177, s. 1; 2013-383, s. 8.)

§ 89G-3. Exemptions.

The provisions of this Chapter shall not apply to:

- (1) Any federal or State agency or any political subdivision performing irrigation construction or irrigation contracting work on public property and using its own employees.
- (2) Any property owner who performs irrigation construction work on his or her own property.
- (3) A landscape architect registered under Chapter 89A of the General Statutes.
- (4) A professional engineer licensed under Chapter 89C of the General Statutes.
- (5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars (\$2,500).
- (6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.
- (7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.
- (8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.
- (9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.
- (10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- (11) A general contractor licensed under Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor.
- (12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.
- (13) Repealed by Session Laws 2013-383, s. 2, effective October 1, 2013.
- (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.
- (15) Any person performing irrigation construction or irrigation contracting work for a golf course.
- (16) Any full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103.
- (17) 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.

- (18) Any unlicensed person or entity who enters into a subcontract with a North Carolina licensed irrigation contractor, where the irrigation work is performed entirely by the North Carolina licensed irrigation contractor in accordance with this Chapter. (2008-177, s. 1; 2012-194, s. 65.8(a); 2013-383, s. 2.)

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

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

- (1) The Commissioner of Agriculture, upon the recommendation of the Carolinas Irrigation Association, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a three-year term.
- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives and pursuant to recommendations from the North Carolina Green Industry Council, shall appoint two members, one who is a registered landscape contractor in good standing with the North Carolina Landscape Contractors Registration Board to serve a one-year term and one who is an irrigation contractor to serve a three-year term.
- (3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two irrigation contractors, one to serve a one-year term and one to serve a two-year term.
- (4) The President of The University of North Carolina System shall appoint one member from within the ranks of the land grant university community who is knowledgeable in irrigation methods and practices to serve a three-year term. The position is open to both current employees of The University of North Carolina System and persons who have earned emeritus status with The University of North Carolina System.
- (5) The Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects shall appoint one member who is a registered landscape architect to serve a two-year term.
- (6) The Governor shall appoint one public member to serve a two-year term.

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

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

(c) **Vacancies.** – Any vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S.

120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

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

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

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

(g) Assistance. – The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter. (2008-177, s. 1; 2013-383, s. 8.)

§ 89G-5. Powers and duties.

The Board shall have the following powers and duties:

- (1) To administer and enforce the provisions of this Chapter.
- (2) To adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To reprimand or otherwise discipline licensees under this Chapter.
- (6) To receive and investigate complaints from members of the public.
- (7) To conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
- (8) To conduct administrative hearings in accordance with Chapter 150B of the General Statutes.
- (9) To seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.
- (10) To collect fees required by G.S. 89G-10 and other monies permitted by law to be paid to the Board.
- (11) To require licensees to file and maintain an adequate surety bond or letter of credit.
- (12) To establish and approve continuing educational requirements for persons licensed under this Chapter.
- (13) To employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
- (14) To maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board actions.
- (15) To adopt and publish a code of professional conduct and practice for all persons licensed under this Chapter. The code shall establish minimum standards for water conservation in the practice of irrigation construction and contracting.

- (16) To publish a list of irrigation best management practices to be followed by licensed irrigation contractors.
- (17) To adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board. (2008-177, s. 1; 2013-383, s. 3.)

§ 89G-6. Application; qualifications; examination; issuance.

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

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

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

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

(c) When the Board determines that an applicant has met all the requirements for licensure, the Board shall issue a license to the applicant. (2008-177, s. 1; 2013-383, s. 8.)

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

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

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

- (2) For a limited liability company, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees empowered to act for the company are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
 - (3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
 - (4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner are individuals licensed under this Chapter, and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.
- (b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection (a) of this section.
- (c) The Board may issue a license in the name of a foreign entity if the following apply:
- (1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (1) of subsection (a) of this section.
 - (2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (2) of subsection (a) of this section.
 - (3) For a foreign partnership, the partnership complies with the requirements of subdivision (3) of subsection (a) of this section.
- (d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section. The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.
- (e) A business entity or foreign entity licensed under this section shall provide written notice to the Board if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity. The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under this subsection. The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section. (2013-383, s. 4.)

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

- (a) Upon licensure by the Board, each irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the

legend "N.C. Licensed Irrigation Contractor." An irrigation contractor may use the seal only while the license is valid.

(b) Every irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business. (2008-177, s. 1.)

§ 89G-8. Reciprocity.

The Board may issue a license, without examination, to any person who is an irrigation contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State. (2008-177, s. 1.)

§ 89G-9. License renewal and continuing education.

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

(b) As a condition of license renewal, an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year.

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the revocation of the license. Upon revocation, an individual shall be required to submit a new application and retake the examination as provided in this Chapter. (2008-177, s. 1; 2013-383, ss. 5, 8.)

§ 89G-10. Expenses and fees.

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

(1)	Application fee	\$100.00
(2)	Examination fee	200.00
(3)	Individual license fee and individual license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00
(4)	Late renewal fee	50.00

- | | | |
|-----|------------------------|--------|
| (5) | License by reciprocity | 250.00 |
| (6) | Reinstatement fee | 250.00 |
| (7) | Duplicate license | 25.00. |

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

(c) The Board must annually review the fees set out in this section to determine whether these fees reflect the actual cost of administering this act and seek legislative changes to the fees if necessary. (2008-177, ss. 1, 5; 2013-383, s. 6.)

§ 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 irrigation 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 reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter. (2008-177, s. 1; 2013-383, ss. 7, 8.)

§ 89G-12. Civil penalties.

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

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

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

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board. (2008-177, s. 1.)

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

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

(b) A licensed irrigation contractor shall notify the Board by registered mail of any complaints filed against the contractor within 30 days from the date the complaint was filed. (2008-177, s. 1; 2013-383, s. 8.)