

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS65332-LUfqq-136A* (04/04)

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

Sponsors: Senator Dalton.

Referred to:

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.

- 1 (3) Irrigation construction or contracting. – The act of providing services
2 as an irrigation contractor for compensation or other consideration.
3 (4) Person. – An individual, firm, partnership, association, corporation, or
4 other legal entity.

5 **"§ 89G-2. License required.**

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

13 **"§ 89G-3. Exemptions.**

14 The provisions in this Chapter shall not apply to:

- 15 (1) Any federal or State agency or any political subdivision performing
16 irrigation construction or contracting work on public property.
17 (2) Any property owner who performs irrigation construction or
18 contracting work on his or her own property.
19 (3) A landscape architect registered under Chapter 89A of the General
20 Statutes.
21 (4) A professional engineer licensed under Chapter 89C of the General
22 Statutes.
23 (5) Any irrigation construction or contracting work where the price of all
24 contracts for labor, material, and other items for a given jobsite for 12
25 consecutive months is less than one thousand five hundred dollars
26 (\$1,500.00).
27 (6) Any person performing irrigation construction or contracting work for
28 temporary irrigation to establish vegetative cover for erosion control.
29 (7) Any person performing irrigation construction or contracting work to
30 control dust on commercial construction sites or mining operations.
31 (8) Any person performing irrigation construction or contracting work for
32 use in agricultural production, farming, or ranching, including land
33 application of animal waste water.
34 (9) Any person performing irrigation construction or contracting work for
35 use in commercial sod production.
36 (10) Any person performing irrigation construction or contracting work for
37 use in the commercial production of horticultural crops, including
38 nursery and greenhouse operators.

39 **"§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.**

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

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

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

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

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

43 (d) Removal. – The Board may remove any of its members for neglect of duty,
44 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings

1 in the member's capacity as a licensed irrigation contractor shall be disqualified from
2 participating in the official business of the Board until the charges have been resolved.

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

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

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

11 **"§ 89G-5. Powers and duties.**

12 The Board shall have the following powers and duties:

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

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

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

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

19 (5) To reprimand or otherwise discipline licensees under this Chapter.

20 (6) To receive and investigate complaints from members of the public.

21 (7) To conduct investigations to determine whether violations of this
22 Chapter exist or constitute grounds for disciplinary action against
23 licensees under this Chapter.

24 (8) To conduct administrative hearings in accordance with Chapter 150B
25 of the General Statutes.

26 (9) To seek injunctive relief through any court of competent jurisdiction
27 for violations of this Chapter.

28 (10) To collect fees required by G.S. 89G-10 and other monies permitted by
29 law to be paid to the Board.

30 (11) To require licensees to file and maintain an adequate surety bond.

31 (12) To establish and approve continuing educational requirements for
32 persons licensed under this Chapter.

33 (13) To employ a secretary-treasurer and any other clerical personnel the
34 Board deems necessary to carry out the provisions of this Chapter and
35 to fix compensation for employees.

36 (14) To maintain a record of all proceedings conducted by the Board and
37 make available to licensees and other concerned parties an annual
38 report of all Board actions.

39 (15) To adopt and publish a code of professional conduct and practice for
40 all persons licensed under this Chapter. The code shall establish
41 minimum standards for water conservation in the practice of irrigation
42 construction and contracting.

43 (16) To publish a list of irrigation best management practices to be
44 followed by licensed irrigation contractors.

1 (17) To adopt a seal containing the name of the Board for use on licenses
2 and official reports issued by the Board.

3 **"§ 89G-6. Application; qualifications; examination; issuance.**

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

8 (1) Is at least 18 years of age.

9 (2) Is of good moral character as determined by the Board.

10 (3) Has at least three years of experience in irrigation construction or
11 contracting or the educational equivalent. Two years of educational
12 training in irrigation construction or contracting shall be the equivalent
13 of one year of experience.

14 (4) Files with the Board and maintains a corporate surety bond executed
15 by a company authorized to do business in this State or an irrevocable
16 letter of credit issued by an insured institution. The surety bond or the
17 letter of credit shall be in the amount of ten thousand dollars
18 (\$10,000). The surety bond or letter of credit shall be approved by the
19 Board as to form and shall be conditioned upon the obligor faithfully
20 conforming to and abiding by the provisions of this Chapter. Any
21 person claiming to be injured by an act of a licensed irrigation
22 contractor that constitutes a violation of this Chapter may institute an
23 action to recover against the licensee and the surety.

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

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

31 (2) Proper methods of irrigation construction.

32 (3) Proper methods for irrigation installation.

33 (4) Basic business skills.

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

36 **"§ 89G-7. Use of seal; posting license.**

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

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

43 **"§ 89G-8. Reciprocity.**

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

5 **"§ 89G-9. License renewal and continuing education.**

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

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

22 **"§ 89G-10. Expenses and fees.**

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

25	(1) <u>Application fee</u>	<u>\$100.00</u>
26	(2) <u>Examination fee</u>	<u>200.00</u>
27	(3) <u>License renewal</u>	<u>100.00</u>
28	(4) <u>Late renewal fee</u>	<u>50.00</u>
29	(5) <u>License by reciprocity</u>	<u>250.00</u>
30	(6) <u>Corporate license</u>	<u>100.00</u>
31	(7) <u>Duplicate license</u>	<u>25.00.</u>

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

35 **"§ 89G-11. Disciplinary action.**

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

- 38 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
 39 attempting to obtain a license or the renewal of a license.
- 40 (2) Practices or attempts to practice irrigation construction or contracting
 41 by fraudulent misrepresentation.
- 42 (3) Commits an act of gross malpractice or incompetence as determined
 43 by the Board.

- 1 (4) Has been convicted of or pled guilty or no contest to a crime that
2 indicates that the person is unfit or incompetent to practice as an
3 irrigation contractor or that indicates that the person has deceived or
4 defrauded the public.
5 (5) Has been declared incompetent by a court of competent jurisdiction.
6 (6) Has willfully violated any provision in this Chapter or any rules
7 adopted by the Board.
8 (7) Uses or attempts to use the seal in a fraudulent or unauthorized
9 manner.
10 (8) Fails to file the required surety bond or letter of credit or to keep the
11 bond or letter of credit in force.

12 **"§ 89G-12. Civil penalties.**

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

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

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

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

29 **"§ 89G-13. Injunction to prevent violation; notification of complaints.**

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

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

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

1 **SECTION 3.** Any person who is a registered landscape contractor under
2 Chapter 89D of the General Statutes on the date this act becomes effective may be
3 issued an irrigation contractor's license under Chapter 89G of the General Statutes, as
4 enacted by Section 1 of this act, without the requirement of examination after
5 successfully applying for and meeting all other requirements and qualifications for
6 licensure, provided the person submits a valid application for licensure to the Board
7 within 180 days of the date this act becomes effective.

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