

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 2353*
Committee Substitute Favorable 6/19/08
Senate Finance Committee Substitute Adopted 7/14/08
Fourth Edition Engrossed 7/15/08

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
AND TO ADD TWO MORE LEGISLATIVE APPOINTMENTS TO THE NORTH
CAROLINA APPRAISAL BOARD.

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 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 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.

- 1 (2) Irrigation contractor. – Any person who, for compensation or other
2 consideration, constructs, installs, expands, services, or repairs
3 irrigation systems.
- 4 (3) Irrigation construction or contracting. – The act of providing services
5 as an irrigation contractor for compensation or other consideration.
- 6 (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves,
7 control wiring of 30 volts or less, and associated components installed
8 for the delivery and application of water for the purpose of irrigation
9 that are downstream of a well, pond or other surface water, potable
10 water or groundwater source, or grey water source and downstream of
11 a backflow prevention assembly. Surface water, potable water or
12 groundwater sources, water taps, utility piping, water service lines,
13 water meters, backflow prevention assemblies, stormwater systems
14 that service only the interior of a structure, and sanitary drainage
15 systems are not part of an irrigation system.
- 16 (5) Person. – An individual, firm, partnership, association, corporation, or
17 other legal entity.

18 **"§ 89G-2. License required.**

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

26 **"§ 89G-3. Exemptions.**

27 The provisions in this Chapter shall not apply to:

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

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

27 **§ 89G-4. The North Carolina Irrigation Contractors' Licensing Board.**

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

- 32 (1) The Commissioner of Agriculture, upon the recommendation of the
33 Carolinas Irrigation Association, shall appoint two irrigation
34 contractors, one to serve a one-year term and one to serve a three-year
35 term.
- 36 (2) The General Assembly, upon the recommendation of the Speaker of
37 the House of Representatives and pursuant to recommendations from
38 the North Carolina Green Industry Council, shall appoint two
39 members, one who is a registered landscape contractor in good
40 standing with the North Carolina Landscape Contractors Registration
41 Board to serve a one-year term and one who is an irrigation contractor
42 to serve a three-year term.

- 1 (3) The General Assembly, upon the recommendation of the President Pro
2 Tempore of the Senate, shall appoint two irrigation contractors, one to
3 serve a one-year term and one to serve a two-year term.
- 4 (4) The President of The University of North Carolina System shall
5 appoint one member from within the ranks of the land grant university
6 community who is knowledgeable in irrigation methods and practices
7 to serve a three-year term. The position is open to both current
8 employees of The University of North Carolina System and persons
9 who have earned emeritus status with The University of North
10 Carolina System.
- 11 (5) The Board of Directors of the North Carolina Chapter of the American
12 Society of Landscape Architects shall appoint one member who is a
13 registered landscape architect to serve a two-year term.
- 14 (6) The Governor shall appoint one public member to serve a two-year
15 term.

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

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

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

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

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

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

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

44 "§ 89G-5. Powers and duties.

1 The Board shall have the following powers and duties:

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

36 **"§ 89G-6. Application; qualifications; examination; issuance.**

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

- 41 (1) Is at least 18 years of age.
42 (2) Is of good moral character as determined by the Board.
43 (3) Has at least three years of experience in irrigation construction or
44 contracting or the educational equivalent. Two years of educational

1 training in irrigation construction or contracting shall be the equivalent
2 of one year of experience.

3 (4) Files with the Board and maintains a corporate surety bond executed
4 by a company authorized to do business in this State or an irrevocable
5 letter of credit issued by an insured institution. The surety bond or the
6 letter of credit shall be in the amount of ten thousand dollars
7 (\$10,000). The surety bond or letter of credit shall be approved by the
8 Board as to form and shall be conditioned upon the obligor's faithfully
9 conforming to and abiding by the provisions of this Chapter. Any
10 person claiming to be injured by an act of a licensed irrigation
11 contractor that constitutes a violation of this Chapter may institute an
12 action to recover against the licensee and the surety.

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

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

20 (2) Proper methods of irrigation construction.

21 (3) Proper methods for irrigation installation.

22 (4) Basic business skills.

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

25 **"§ 89G-7. Use of seal; posting license.**

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

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

32 **"§ 89G-8. Reciprocity.**

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

37 **"§ 89G-9. License renewal and continuing education.**

38 (a) Every license issued under this Chapter shall be renewed on or before
39 December 31 of each year. Any person who desires to continue to practice shall apply
40 for license renewal and shall submit the required fees. Licenses that are not renewed
41 shall be automatically revoked. A license may be renewed at any time within one year
42 after its expiration, if: (i) the applicant pays the required renewal fee and late renewal
43 fee; (ii) the Board finds that the applicant has not used the license in a manner
44 inconsistent with the provisions of this Chapter or engaged in the practice of irrigation

1 construction or contracting after notice of revocation; and (iii) the applicant is otherwise
2 eligible for licensure under the provisions of this Chapter. When necessary, the Board
3 may require a licensee to demonstrate continued competence as a condition of license
4 renewal.

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

10 **"§ 89G-10. Expenses and fees.**

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

13	(1) <u>Application fee</u>	<u>\$100.00</u>
14	(2) <u>Examination fee</u>	<u>200.00</u>
15	(3) <u>License renewal</u>	<u>100.00</u>
16	(4) <u>Late renewal fee</u>	<u>50.00</u>
17	(5) <u>License by reciprocity</u>	<u>250.00</u>
18	(6) <u>Corporate license</u>	<u>100.00</u>
19	(7) <u>Duplicate license</u>	<u>25.00.</u>

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

23 **"§ 89G-11. Disciplinary action.**

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

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

43 **"§ 89G-12. Civil penalties.**

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

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

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

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

17 **"§ 89G-13. Injunction to prevent violation; notification of complaints.**

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

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

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

40 **SECTION 4.** Any person who can document 10 years in business as an
41 irrigation contractor as of the date this act becomes effective, can document competency
42 in the practice of irrigation contracting, as determined by the Board, and meets all other
43 requirements and qualifications for licensure may be issued an irrigation contractor's
44 license under Chapter 89G of the General Statutes, as enacted by Section 1 of this act,

1 without the requirement of examination, provided that the person submits an application
2 for licensure to the Board within 180 days of the date this act becomes effective.

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

6 **SECTION 6.(a)** G.S. 93E-1-5(a) reads as rewritten:

7 "(a) There is created the North Carolina Appraisal Board for the purposes set forth
8 in this Chapter. The Board shall consist of ~~seven~~nine members. The Governor shall
9 appoint five members of the Board, and the General Assembly shall appoint ~~two~~four
10 members in accordance with G.S. 120-121, ~~one~~two upon the recommendation of the
11 President Pro Tempore of the Senate and ~~one~~two upon the recommendation of the
12 Speaker of the House of Representatives. Members appointed by the Governor shall be
13 appointed from geographically diverse areas of the State. The ~~appointee~~appointees
14 recommended by the Speaker of the House of Representatives and the appointees of the
15 Governor shall be persons who have been engaged in the business of real estate
16 appraising in this State for at least five years immediately preceding their appointment
17 and are also State-licensed or State-certified real estate appraisers. No more than three
18 of the appointees may be members of the same appraiser trade organization at any one
19 time. The ~~appointee~~appointees recommended by the President Pro Tempore of the
20 Senate shall be a person not involved directly or indirectly in the real estate, real estate
21 appraisal, or the real estate lending industry. Members of the Board shall serve
22 three-year terms, so staggered that the terms of three members expire in one year, the
23 terms of ~~two~~three members expire in the next year, and the terms of ~~two~~three members
24 expire in the third year of each three-year period. The members of the Board shall elect
25 one of their members to serve as chairman of the Board for a term of one year. The
26 Governor may remove any member of the Board appointed by the Governor for
27 misconduct, incompetency, or neglect of duty. The General Assembly may remove any
28 member appointed by it for the same reasons. Successors shall be appointed by the
29 appointing authority making the original appointment. All vacancies occurring on the
30 Board shall be filled, for the unexpired term, by the appointing authority making the
31 original appointment. Vacancies in appointments made by the General Assembly shall
32 be filled in accordance with G.S. 120-122. Initial terms of office commenced July 1,
33 1994."

34 **SECTION 6.(b)** The initial term of the additional members appointed by the
35 General Assembly under G.S. 93E-1-5(a), as amended by this act, will commence for
36 the terms beginning July 1, 2008. To continue the staggered terms as required under
37 G.S. 93E-1-5, the initial appointment of the additional member appointed by the
38 President Pro Tempore of the Senate shall serve a one-year term and the initial
39 appointment of the additional member appointed by the Speaker of the House of
40 Representatives shall serve a three-year term.

41 **SECTION 7.** G.S. 89G-4, as enacted in Section 1 of this act, becomes
42 effective October 1, 2008. Section 6 of this act is effective when it becomes law. The
43 remainder of this act becomes effective January 1, 2009, and the exemption provided in
44 G.S. 89G-3(16) applies to irrigation systems installed on or before that date.