

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 405  
Commerce Committee Substitute Adopted 4/28/11  
PROPOSED COMMITTEE SUBSTITUTE S405-PCS15157-TD-35

Short Title: Amend Irrigation Contractors' Licensing Laws.

(Public)

Sponsors:

Referred to:

March 24, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO  
3 PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO  
4 PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY  
5 THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 89G-1 is amended by adding a new subdivision to read:

8 **"§ 89G-1. Definitions.**

9 The following definitions apply in this Chapter:

- 10 (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.  
11 (1a) Business entity. – A person that is not an individual.  
12 (1b) Delinquent income tax debt. – The amount of income tax due as stated in a  
13 final notice of assessment issued to a taxpayer by the Secretary of Revenue  
14 when the taxpayer no longer has the right to contest the amount.  
15 (1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.  
16 (1d) Foreign entity. – A foreign corporation, a foreign limited liability company,  
17 or a foreign partnership.  
18 (1e) Foreign limited liability company. – A company as defined in  
19 G.S. 57C-1-03.  
20 (1f) Foreign partnership. – One of the following that does not have a permanent  
21 place of business in this State:  
22 a. A foreign limited partnership as defined in G.S. 59-102.  
23 b. A general partnership formed under the laws of a jurisdiction other  
24 than this State.  
25 (2) Irrigation construction or irrigation contracting. – The act of providing  
26 services as an irrigation contractor for compensation or other consideration.  
27 (3) Irrigation contractor. – Any person who, for compensation or other  
28 consideration, constructs, installs, expands, services, or repairs irrigation  
29 systems.  
30 (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves,  
31 control wiring of 30 volts or less, and associated components installed for  
32 the delivery and application of water for the purpose of irrigation that are  
33 downstream of a well, pond or other surface water, potable water or



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

6 (4a) Nonresident individual. – An individual who is not a resident of this State.

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

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

10 **"§ 89G-3. Exemptions.**

11 The provisions in this Chapter shall not apply to:

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

- 1 (15) Any person performing irrigation construction or irrigation contracting work  
2 for a golf course.
- 3 (16) Any ~~person~~full-time employee of a homeowners association maintaining or  
4 repairing an irrigation system owned by the homeowners association of a  
5 planned community and located within the planned community's common  
6 elements as defined in G.S. 47F-1-103."

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

8 "**§ 89G-5. Powers and duties.**

9 The Board shall have the following powers and duties:

10 ...

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

13 ...."

14 **SECTION 4.** Chapter 89G of the General Statutes is amended by adding the  
15 following new sections to read:

16 "**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

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

- 19 (1) For a corporation, one or more officers or full-time employees empowered to  
20 act for the corporation are individuals licensed under this Chapter and only  
21 the individuals licensed under this Chapter execute contracts for irrigation  
22 construction and irrigation contracting.
- 23 (2) For a limited liability, one or more managers or executives as defined in  
24 G.S. 57C-1-03 or full-time employees are individuals licensed under this  
25 Chapter and only the individuals licensed under this Chapter execute  
26 contracts for irrigation construction and irrigation contracting.
- 27 (3) For a partnership, one or more general partners or full-time employees  
28 empowered to act for the partnership are individuals licensed under this  
29 Chapter and only the individuals licensed under this Chapter execute  
30 contracts for irrigation construction and irrigation contracting.
- 31 (4) For a business entity using an assumed name or designated trade name, the  
32 owner or one or more full-time employees empowered to act for the owner is  
33 an individual licensed under this Chapter and only the individuals licensed  
34 under this Chapter execute contracts for irrigation construction and irrigation  
35 contracting.

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

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

- 41 (1) For a foreign corporation, the corporation has obtained a certificate of  
42 authority from the Secretary of State pursuant to Article 15 of Chapter 55 of  
43 the General Statutes and complies with the requirements of subdivision  
44 (a)(1) of this section.
- 45 (2) For a foreign limited liability company, the company has obtained a  
46 certificate of authority from the Secretary of State pursuant to Article 7 of  
47 Chapter 57C of the General Statutes and complies with the requirements of  
48 subdivision (a)(2) of this section.
- 49 (3) For a foreign partnership, the partnership complies with the requirements of  
50 subdivision (a)(3) of this section.

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

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

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

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

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

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

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

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

21       "**§ 89G-9. License renewal and continuing education.**

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

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

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

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

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

48       (1)	Application fee	\$100.00
49       (2)	Examination fee	200.00
50       (3)	<del>License</del> <u>Individual license fee and individual</u> 51 <u>license renewal fee</u>	100.00

1	(3a)	<u>Business entity or foreign entity license fee and</u>	
2		<u>business entity or foreign entity license renewal</u>	
3		<u>fee</u>	<u>100.00</u>
4	(4)	Late renewal fee	50.00
5	(5)	License by reciprocity	250.00
6	(6)	<del>Corporate license</del> <u>Reinstatement fee</u>	<del>100.00</del> <u>250.00</u>
7	(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, 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.** This act becomes effective October 1, 2011.