

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 71
PROPOSED COMMITTEE SUBSTITUTE S71-PCS35069-SUF-2

Short Title: Amend Irrigation Contractors Licensing Laws.

(Public)

Sponsors:

Referred to:

February 11, 2013

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, TO PROVIDE FOR LICENSURE OF EXPERIENCED
6 IRRIGATION CONTRACTORS WITHOUT THE REQUIREMENT OF AN
7 EXAMINATION WHERE CERTAIN CONDITIONS ARE MET, AND TO MAKE
8 OTHER CONFORMING CHANGES.

9 The General Assembly of North Carolina enacts:

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

11 "§ 89G-1. Definitions.

12 The following definitions apply in this Chapter:

- 13 (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.
14 (1a) Business entity. – A person that is not an individual.
15 (1b) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
16 (1c) Foreign entity. – A foreign corporation, a foreign limited liability company,
17 or a foreign partnership.
18 (1d) Foreign limited liability company. – A company as defined in
19 G.S. 57C-1-03.
20 (1e) 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
34 groundwater source, or grey water source and downstream of a backflow
35 prevention assembly. Surface water, potable water or groundwater sources,
36 water taps, utility piping, water service lines, water meters, backflow



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1 prevention assemblies, stormwater systems that service only the interior of a
2 structure, and sanitary drainage systems are not part of an irrigation system.

3 (4a) Nonresident individual. – An individual who is not a resident of this State.

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

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

7 **"§ 89G-3. Exemptions.**

8 The provisions ~~in~~ of this Chapter shall not apply to:

9 (1) Any federal or State agency or any political subdivision performing
10 irrigation construction or irrigation contracting work on public
11 ~~property~~ property and using its own employees.

12 (2) Any property owner who performs irrigation construction ~~or contracting~~
13 work on his or her own property.

14 (3) A landscape architect registered under Chapter 89A of the General Statutes.

15 (4) A professional engineer licensed under Chapter 89C of the General Statutes.

16 (5) Any irrigation construction or irrigation contracting work where the price of
17 all contracts for labor, material, and other items for a given jobsite is less
18 than two thousand five hundred dollars (\$2,500).

19 (6) Any person performing irrigation construction or irrigation contracting work
20 for temporary irrigation to establish vegetative cover for erosion control.

21 (7) Any person performing irrigation construction or irrigation contracting work
22 to control dust on commercial construction sites or mining operations.

23 (8) Any person performing irrigation construction or irrigation contracting work
24 for use in agricultural production, farming, or ranching, including land
25 application of animal wastewater.

26 (9) Any person performing irrigation construction or irrigation contracting work
27 for use in commercial sod production.

28 (10) Any person performing irrigation construction or irrigation contracting work
29 for use in the commercial production of horticultural crops, including
30 nursery and greenhouse operators.

31 (11) A general contractor licensed under Article 1 of Chapter 87 of the General
32 ~~Statutes~~ Statutes who possesses a classification under G.S. 87-10(b) as a
33 building contractor, a residential contractor, or a public utilities contractor
34 when the contractor uses the contractor's own employees to perform
35 irrigation construction or irrigation contracting work. A public utilities
36 contractor exempted by this subdivision may perform only the activities
37 described in G.S. 87-10(b)(3)a.

38 (12) A wastewater contractor certified under Article 5 of Chapter 90A of the
39 General Statutes who performs only the construction of or repair to a
40 wastewater dispersal system.

41 ~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the~~
42 ~~General Statutes.~~

43 (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General
44 Statutes who performs only the following work: installation, repairs, or
45 maintenance of water mains, water taps, service lines, water meters, or
46 backflow prevention assemblies supplying water for irrigation systems; or
47 repairs to an irrigation system.

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

50 (16) Any ~~person~~ full-time employee of a homeowners association maintaining or
51 repairing an irrigation system owned by the homeowners association of a

1 planned community and located within the planned community's common
2 elements as defined in G.S. 47F-1-103.

3 (17) Any unlicensed person or entity who enters into a subcontract with a North
4 Carolina licensed irrigation contractor, where the irrigation work is
5 performed entirely by the North Carolina licensed irrigation contractor in
6 accordance with this Chapter."

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 a new
15 section 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 company, one or more managers or executives as
24 defined in G.S. 57C-1-03 or full-time employees empowered to act for the
25 company are individuals licensed under this Chapter, and only the
26 individuals licensed under this Chapter execute contracts for irrigation
27 construction and irrigation contracting.

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

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

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

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

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

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

50 (3) For a foreign partnership, the partnership complies with the requirements of
51 subdivision (3) of subsection (a) 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) All of the following shall apply if the individual licensee required under subsection
8 (a) of this section ceases to be an officer, full-time employee, manager, executive, general
9 partner, or owner of the business entity or foreign entity licensed under this section:

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

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

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

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

18 "**§ 89G-9. License renewal and continuing education.**

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

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

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

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

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

45 (1) Application fee \$100.00

46 (2) Examination fee 200.00

47 (3) ~~License~~Individual license fee and individual
48 license renewal fee 100.00

49 (3a) Business entity or foreign entity license fee
50 and business entity or foreign entity license
51 renewal fee 100.00

1	(4)	Late renewal fee	50.00
2	(5)	License by reciprocity	250.00
3	(6)	Corporate license Reinstatement fee	100.00 250.00
4	(7)	Duplicate license	25.00."

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

6 "**§ 89G-11. Disciplinary action.**

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

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

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

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

30 SECTION 9.(a) Any person who can document 10 years in business as an
31 irrigation contractor as of January 1, 2009, can document competency in the practice of
32 irrigation construction or irrigation contracting, as determined by the North Carolina Irrigation
33 Contractors' Licensing Board, and meets all other requirements and qualifications for licensure
34 may be issued an irrigation contractor's license under Chapter 89G of the General Statutes,
35 without the requirement of examination, provided that the person submits an application for
36 licensure to the Board prior to October 1, 2013.

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

41 SECTION 10. Sections 9(a) and 9(b) of this act are effective when this act
42 becomes law. The remainder of this act becomes effective October 1, 2013.