

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 893*

Short Title: Landscape/Irrigation Contractors. (Public)

Sponsors: Senators Weinstein; Carpenter, Garwood, Odom, Purcell, Rucho, and Wellons.

Referred to: Commerce.

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE
3 CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE
4 LAWS REGULATING LANDSCAPE CONTRACTORS, TO ALLOW THE
5 GENERAL ASSEMBLY TO APPOINT TWO OF THE NINE MEMBERS TO
6 THE NORTH CAROLINA LANDSCAPE/IRRIGATION CONTRACTORS'
7 LICENSING BOARD, AND TO AUTHORIZE THE BOARD TO INCREASE
8 FEES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 89D-1 through 89D-10 are repealed.

11 **SECTION 2.** Chapter 89D is amended by adding the following new sections

12 to read:

13 **"§ 89D-11. Definitions.**

14 The following definitions apply in this Chapter:

- 15 (1) Board. – The North Carolina Landscape/Irrigation Contractors'
16 Licensing Board.
- 17 (2) Irrigation contractor. – Any person who, for compensation or other
18 consideration, constructs, installs, or maintains irrigation systems.
- 19 (3) Irrigation construction or contracting. – The act of providing services
20 as an irrigation contractor, as defined in this section, for compensation
21 or other consideration.
- 22 (4) Landscape contractor. – Any person who, for compensation or other
23 consideration, does any of the following:
- 24 a. Engages in the business requiring the art, experience, ability,
25 knowledge, science, and skill to install, plant, repair, and
26 maintain gardens, lawns, shrubs, vines, trees, or other
27 decorative vegetation including the grading and preparation of

1 plots and areas of land for decorative treatment and
2 arrangement.

3 b. Practices the act of landscape or horticulture consultation or
4 landscape design for employment purposes.

5 c. Constructs, installs, or maintains drainage systems.

6 d. Engages in the incidental construction of garden pools,
7 fountains, pavilions, conservatories, hothouses and
8 greenhouses, retaining walls, fences, or walks.

9 e. Engages in any of these acts in a manner that, under an agreed
10 specification, an acceptable landscaping project can be
11 executed.

12 (5) Landscape construction or contracting. – The act of providing services
13 as a landscape contractor, as defined in this section, for compensation
14 or other consideration.

15 (6) Person. – An individual, firm, partnership, association, corporation, or
16 other legal entity.

17 **"§ 89D-12. License required; use of seal; posting license.**

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

25 (b) Except as otherwise provided in this Chapter, no person shall engage in the
26 practice of irrigation construction or contracting, use the designation 'irrigation
27 contractor', or advertise using any title or description that implies licensure as an
28 irrigation contractor unless the person is licensed by the Board as provided by this
29 Chapter. All irrigation construction or contracting performed by a partnership,
30 association, corporation, firm, or other group shall be under the direct supervision of an
31 individual licensed by the Board under this Chapter.

32 (c) Upon licensure by the Board, each landscape contractor or irrigation
33 contractor shall obtain a seal of the design authorized by the Board and bearing the
34 name of the licensee, the number of the license, and the legend 'N.C. Licensed
35 Landscape Contractor' or 'N.C. Licensed Irrigation Contractor'. A landscape contractor
36 or irrigation contractor may use the seal only while the license is valid.

37 (d) Every landscape contractor or irrigation contractor issued a license under this
38 Chapter shall display the license conspicuously in the contractor's place of business.

39 **"§ 89D-13. Exemptions.**

40 The provisions in this Chapter shall not apply to:

41 (1) Any federal or State agency or any political subdivision performing
42 landscaping on public property.

43 (2) Any landscape architect registered under Chapter 89A of the General
44 Statutes.

- 1 (3) Any property owner who performs landscape construction on his or
2 her own property.
- 3 (4) Any landscaping work where the price of all contracts for labor,
4 material, and other items for a given job site during any consecutive
5 12-month period is less than seven thousand five hundred dollars
6 (\$7,500).
- 7 (5) Any irrigation work where the price of all contracts for labor, material,
8 and other items for a given job site during any consecutive 12-month
9 period is less than three thousand five hundred dollars (\$3,500).
- 10 (6) Installation of fences, decks, arbors, driveways, walkways, or retaining
11 walls when performed by a person or business licensed pursuant to
12 Article 1 of Chapter 87 of the General Statutes.
- 13 (7) Those engaged only in the business of clearing and grading plots and
14 areas of land.
- 15 (8) Those engaged only in the business of erosion control.
- 16 (9) Those engaged only in the business of arboriculture, including
17 consultations on pruning and removal of trees.
- 18 (10) Those engaged only in the business of seed and sod installation.
- 19 (11) Utilities contractors engaged in landscape construction for the purpose
20 of grading and erosion control.

21 **"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

22 (a) The North Carolina Landscape/Irrigation Contractors' Licensing Board is
23 created. The Board shall consist of nine members who are appointed as follows:

- 24 (1) One of the members shall be appointed by the Governor and shall be a
25 member of the general public.
- 26 (2) One the members shall be appointed by the Commissioner of
27 Agriculture upon the recommendation of the Carolinas Irrigation
28 Association.
- 29 (3) Two of the members shall be practicing nurserymen operating a
30 nursery certified by the North Carolina Department of Agriculture and
31 Consumer Services Plant Pest Inspection Program upon the
32 recommendation of the Board of Directors of the North Carolina
33 Association of Nurserymen, Inc.
- 34 (4) Three of the members shall be licensed landscape contractors in the
35 business of landscape construction or contracting. One of the three
36 members shall be appointed by the General Assembly upon the
37 recommendation of the Speaker of the House of Representatives and
38 two shall be appointed by the Board of Directors of the North Carolina
39 Landscape Association, Inc.
- 40 (5) One of the members shall be a licensed irrigation contractor in the
41 business of irrigation construction or contracting appointed by the
42 General Assembly upon the recommendation of the President Pro
43 Tempore of the Senate.

1 (6) One of the members shall be a registered landscape architect appointed
2 by the Board of Directors of the North Carolina Chapter of the
3 American Society of Landscape Architects.

4 (b) Members of the Board shall serve three-year terms, so staggered that the
5 terms of three members expire in one year, the terms of three members expire in the
6 next year, and the terms of three members expire in the third year of each three-year
7 period. No member shall serve more than two complete consecutive terms.

8 (c) A vacancy on the Board created by death, resignation, or otherwise shall be
9 filled in the same manner as the original appointment, except that all unexpired terms of
10 Board members appointed by the General Assembly shall be filled in accordance with
11 G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired
12 term and until their successors are appointed and qualified.

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

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

18 (f) The Board shall be entitled to the services of the Attorney General in
19 connection with the affairs of the Board or may, in its discretion, employ an attorney to
20 assist or represent it in the enforcement of this Chapter.

21 "**§ 89D-15. Powers and duties.**

22 The Board shall have the following powers and duties:

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

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

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

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

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

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

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

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

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

38 (10) To collect fees required by G.S. 89D-19 and any other monies
39 permitted by law to be paid to the Board.

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

41 (12) To establish and approve continuing education requirements for
42 persons licensed under this Chapter.

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

4 (14) To maintain a record of all proceedings conducted by the Board and
5 make available to licensees and other concerned parties an annual
6 report of all Board action.

7 (15) To adopt and publish a code of professional conduct for all persons
8 licensed under this Chapter.

9 (16) To adopt a seal containing the name of the Board for use on licenses
10 and official reports issued by the Board.

11 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

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

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

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

19 (3) Has at least three years of experience in landscape construction or
20 contracting or the educational equivalent or three years of experience
21 in irrigation construction or contracting or the educational equivalent.
22 Two years of educational training in landscape construction or
23 contracting or irrigation construction or contracting shall be the
24 equivalent of one year of experience.

25 (4) Files with the Board and maintains a corporate surety bond executed
26 by a company authorized to do business in this State or an irrevocable
27 letter of credit issued by an insured institution. The surety bond or the
28 letter of credit shall be in the amount of seven thousand five hundred
29 dollars (\$7,500). The surety bond or letter of credit shall be approved
30 by the Board as to form and shall be conditioned upon the obligor
31 faithfully conforming to and abiding by the provisions of this Chapter.
32 Any person claiming to be injured by an act of a licensed landscape
33 contractor or a licensed irrigation contractor that constitutes a violation
34 of this Chapter may institute an action to recover against the licensee
35 and the surety.

36 (b) If the application is satisfactory to the Board, the applicant shall be required
37 to pass an examination administered by the Board. The Board shall establish the scope
38 and subject matter of the examination, and examinations shall be held at least twice a
39 year at a time and place to be determined by the Board. When the Board determines that
40 an applicant has met all the qualifications for licensure and has submitted the required
41 fee, the Board shall issue a license to the applicant.

42 **"§ 89D-17. Reciprocity.**

43 The Board may issue a license, without examination, to any person who is a
44 landscape contractor or irrigation contractor licensed, certified, or registered in another

1 state or country if the requirements for licensure, certification, or registration in the
 2 other state or country are substantially equivalent to the requirements for licensure in
 3 this State.

4 **"§ 89D-18. License renewal and continuing education.**

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

16 (b) As a condition of license renewal, a licensee must meet the continuing
 17 education requirements set by the Board. Each licensee shall complete 20 continuing
 18 education units within a three-year period. A licensee shall not acquire more than 10 of
 19 the 20 continuing education units required for license renewal in a one-year period.
 20 Failure to obtain continuing education units shall result in the forfeiture of a license.
 21 Upon forfeiture, a person shall be required to submit a new application and retake the
 22 examination as provided in this Chapter.

23 **"§ 89D-19. Expenses and fees.**

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

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

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

36 **"§ 89D-20. Disciplinary action.**

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

- 39 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
 40 attempting to obtain a license or the renewal of a license.
- 41 (2) Practices or attempts to practice landscape construction or contracting
 42 or irrigation construction or contracting by fraudulent
 43 misrepresentation.

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

14 **"§ 89D-21. Civil penalties.**

15 (a) In addition to taking any of the actions permitted under G.S. 89D-20, the
16 Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each
17 violation of any section of this Chapter or the violation of any rules adopted by the
18 Board. All civil penalties collected by the Board shall be remitted to the school fund of
19 the county in which the violation occurred.

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

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

29 **"§ 89D-22. 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 landscape construction or contracting or irrigation
32 construction or contracting, the Board may appear in its own name in superior court in
33 actions for injunctive relief to prevent any person from violating the provisions of this
34 Chapter or the rules adopted by the Board.

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

38 **SECTION 3.** Any person already registered as a landscape contractor on the
39 effective date of this act shall be issued a landscape contractor's license and an irrigation
40 contractor's license without the requirement of examination. Any person who has
41 obtained Certified Irrigation Contractor (CIC) certifications through the Carolinas
42 Irrigation Association shall be issued an irrigation contractor's license and a landscape
43 contractor's license without the requirement of examination.

1 **SECTION 4.** Members serving on the North Carolina Landscape/Irrigation
2 Contractors' Licensing Board on the effective date of this act may complete the terms
3 for which they were appointed. When the term of the member appointed by the
4 Governor and whose term expires on December 1, 2002, is completed, the General
5 Assembly, upon the recommendation of the Speaker of the House of Representatives,
6 shall, pursuant to G.S. 89D-14(a)(4), as enacted in Section 2 of this act, appoint to the
7 Board one member who is a licensed landscape contractor. When the term of the
8 member appointed by the Commissioner of Agriculture and whose term expires on
9 December 1, 2002, is completed, the General Assembly, upon the recommendation of
10 the President Pro Tempore of the Senate, shall, pursuant to G.S. 89D-14(a)(5), as
11 enacted in Section 2 of this act, appoint to the Board one member who is a licensed
12 irrigation contractor. After the terms of all other Board members expire, appointments
13 shall continue to be filled in the same manner as the original appointment.

14 **SECTION 5.** This act becomes effective October 1, 2001.