

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 405

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors: Senators Hartsell, Brown; and Vaughan.

Referred to: Commerce.

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-3 reads as rewritten:

8 "§ 89G-3. Exemptions.

9 The provisions in this Chapter shall not apply to:

- 10 (1) ~~Any federal or State agency or any political subdivision performing~~
11 ~~irrigation construction or contracting work on public property.~~
- 12 (2) Any property owner who performs irrigation construction or irrigation
13 contracting 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.



- 1 (12) A wastewater contractor certified under Article 5 of Chapter 90A of the
2 General Statutes who performs only the construction of or repair to a
3 wastewater dispersal system.
- 4 (13) ~~A public utility contractor licensed under Article 1 of Chapter 87 of the~~
5 ~~General Statutes.~~
- 6 (14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General
7 Statutes who performs only the following work: installation, repairs, or
8 maintenance of water mains, water taps, service lines, water meters, or
9 backflow prevention assemblies supplying water for irrigation systems; or
10 repairs to an irrigation system.
- 11 (15) Any person performing irrigation construction or irrigation contracting work
12 for a golf course.
- 13 (16) Any ~~person~~full-time employee of a homeowners association maintaining or
14 repairing an irrigation system owned by the homeowners association of a
15 planned community and located within the planned community's common
16 elements as defined in G.S. 47F-1-103."

17 **SECTION 2.** G.S. 89G-5(11) reads as rewritten:

18 **"§ 89G-5. Powers and duties.**

19 The Board shall have the following powers and duties:

20 ...

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

23"

24 **SECTION 3.** Chapter 89G of the General Statutes is amended by adding the
25 following new sections to read:

26 **"§ 89G-6.1. Corporations; partnerships; persons doing business under trade name.**

27 (a) The Board may issue a license in the name of a corporation if the corporation pays
28 the license fee required by G.S. 89G-10 and complies with the following:

- 29 (1) One or more officers or full-time employees, or both, empowered to act for
30 the corporation are individuals licensed under this Chapter.
- 31 (2) Only the officers or employees described in subdivision (1) of this
32 subsection execute contracts for irrigation construction in the name of a
33 corporation and exercise direct supervision over the work performed
34 pursuant to the contract.

35 (b) The Board may issue a license in the name of a limited liability company if the
36 company pays the fee required by G.S. 89G-10 and complies with the following:

- 37 (1) One or more managers or executives, as defined in G.S. 57C-1-03, or
38 full-time employees, or a combination thereof, are individuals licensed under
39 this Chapter.
- 40 (2) Only the managers, executives, or employees described in subdivision (1) of
41 this subsection execute contracts for irrigation construction in the name of
42 the limited liability company and exercise direct supervision over the work
43 performed pursuant to the contract.

44 (c) The Board may issue a license in the name of a partnership if the partnership pays
45 the fee required by G.S. 89G-10 and complies with the following:

- 46 (1) One or more general partners or full-time employees empowered to act for
47 the partnership are individuals licensed under this Chapter.
- 48 (2) Only the partners or employees described in subdivision (1) of this
49 subsection execute contracts for irrigation construction in the name of the
50 partnership and exercise direct supervision over the work performed
51 pursuant to the contract.

1 (d) The Board may issue a license in an assumed or designated trade name if the owner
2 of the business pays the fee required by G.S. 89G-10 and complies with the following:

3 (1) The owner or one or more full-time employees empowered to act for the
4 owner is an individual licensed under this Chapter.

5 (2) Only the persons described in subdivision (1) of this subsection execute
6 contracts for irrigation construction in the assumed or designated trade name
7 of the business and exercise direct supervision over the work performed
8 pursuant to the contract.

9 (e) When the Board issues a license under this section, the Board shall indicate on the
10 license the name and license number of the individual licensee connected to the corporation,
11 partnership, or business conducted under an assumed or designated trade name.

12 (f) A person licensed pursuant to this section shall exercise direct supervision over a
13 contract for irrigation construction until the contract is completed.

14 (g) When an individual licensee, other than a sole proprietor, executes a contract for
15 irrigation construction on behalf of another person, the person on whose behalf the licensee is
16 executing the contract shall be licensed under this section.

17 (h) A corporation, limited liability company, partnership, or person doing business
18 under an assumed or designated trade name shall notify the Board in accordance with rules
19 adopted by the Board if an individual licensee who is indicated in the license issued under this
20 section ceases to be an officer, partner, owner, or employee of the corporation, limited liability
21 company, partnership, or person doing business under the assumed or designated trade name. If
22 the corporation, partnership, or person no longer has an officer, general partner, owner, or
23 employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation,
24 partnership, or person shall have 90 days from the date the officer, general partner, owner, or
25 employee ceases the relationship with the corporation, partnership, or person to satisfy the
26 requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. After 90 days, if
27 the corporation, partnership, or person does not have an officer, general partner, owner, or
28 employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued
29 under this section is automatically suspended, and the corporation, partnership, or person shall
30 cease practicing irrigation construction or irrigation contracting.

31 **"§ 89G-6.2. Licensing of nonresidents.**

32 (a) Definitions. – The following definitions apply in this section:

33 (1) Delinquent income tax debt. – The amount of income tax due as stated in a
34 final notice of assessment issued to a taxpayer by the Secretary of Revenue
35 when the taxpayer no longer has the right to contest the amount.

36 (2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

37 (3) Foreign entity. – A foreign corporation, a foreign limited liability company,
38 or a foreign partnership.

39 (4) Foreign limited liability company. – A company as defined in
40 G.S. 57C-1-03.

41 (5) Foreign partnership. – One of the following that does not have a permanent
42 place of business in this State:

43 a. A foreign limited partnership as defined in G.S. 59-102.

44 b. A general partnership formed under the laws of a jurisdiction other
45 than this State.

46 (b) Licensing. – Except as provided in this section, the Board may issue a license to a
47 nonresident individual or a foreign entity that meets the requirements for licensure under this
48 Chapter.

49 (c) Certificate of Authority Required. – The Board shall not issue a license for a foreign
50 corporation unless the corporation has obtained a certificate of authority from the Secretary of
51 State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a

1 license for a foreign limited liability company unless the company has obtained a certificate of
 2 authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General
 3 Statutes.

4 (d) Information. – The Board, upon request, shall provide the Secretary of Revenue the
 5 name, address, and tax identification number of every nonresident individual and foreign entity
 6 licensed by the Board. The information to be provided under this subsection shall be in a form
 7 required by the Secretary of Revenue.

8 (e) Delinquents. – If the Secretary of Revenue determines that any nonresident
 9 individual or foreign entity licensed by the Board owes a delinquent income tax debt, the
 10 Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and
 11 instruct the Board not to renew the nonresident individual or foreign entity's license. The Board
 12 shall not renew the license of a nonresident individual or foreign entity identified by the
 13 Secretary of Revenue unless the Board receives a written statement from the Secretary that (i)
 14 the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement."

15 **SECTION 4.** G.S. 89G-9(b) reads as rewritten:

16 "(b) As a condition of license renewal, ~~a~~an individual licensee shall meet continuing
 17 education requirements set by the Board. Each licensee shall complete 10 continuing education
 18 units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a~~
 19 ~~license.~~ The Board may suspend a licensee's license for 30 days for failure to obtain continuing
 20 education units required by this subsection. Upon payment of a reinstatement fee, the license
 21 shall be reinstated. Failure to request a reinstatement of the license and payment of the
 22 reinstatement fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be
 23 required to submit a new application and retake the examination as provided in this Chapter."

24 **SECTION 5.** G.S. 89G-10(a) reads as rewritten:

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

- | | | | |
|----|------|---|---------------------------------|
| 26 | (1) | Application fee | \$100.00 |
| 27 | (2) | Examination fee | 200.00 |
| 28 | (3) | License Individual license fee and individual | |
| 29 | | license renewal | 100.00 |
| 30 | (3a) | <u>Initial corporate, limited liability company, partnership,</u> | |
| 31 | | <u>or trade-name license</u> | <u>100.00</u> |
| 32 | (3b) | <u>Corporate, limited liability company, partnership,</u> | |
| 33 | | <u>or trade-name renewal</u> | <u>100.00</u> |
| 34 | (4) | Late renewal fee | 50.00 |
| 35 | (5) | License by reciprocity | 250.00 |
| 36 | (6) | Corporate license <u>Reinstatement fee</u> | 100.00 <u>500.00</u> |
| 37 | (7) | Duplicate license | 25.00." |

38 **SECTION 6.** G.S. 89G-11 reads as rewritten:

39 **"§ 89G-11. Disciplinary action.**

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

- 42 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
 43 attempting to obtain a license or the renewal of a license.
- 44 (2) Practices or attempts to practice irrigation construction or contracting by
 45 fraudulent misrepresentation.
- 46 (3) Commits an act of gross malpractice or incompetence as determined by the
 47 Board.
- 48 (4) Has been convicted of or pled guilty or no contest to a crime that indicates
 49 that the person is unfit or incompetent to practice as an irrigation contractor
 50 or that indicates that the person has deceived or defrauded the public.
- 51 (5) Has been declared incompetent by a court of competent jurisdiction.

- 1 (6) Has willfully violated any provision in this Chapter or any rules adopted by
2 the Board.
3 (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
4 (8) Fails to file the required surety bond or letter of credit or to keep the bond or
5 letter of credit in force.

6 **(b)** The Board may assess costs, including attorneys' fees, in a proceeding under this
7 section against an applicant or licensee found to be in violation of this Chapter."

8 **SECTION 7.** The Revisor of Statutes shall change the phrase "irrigation
9 construction or contracting" to "irrigation construction or irrigation contracting" wherever it
10 appears in Chapter 89G of the General Statutes.

11 **SECTION 8.** This act becomes effective October 1, 2011.