

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

2

SENATE BILL 405  
Commerce Committee Substitute Adopted 4/28/11

Short Title: Amend Irrigation Contractors' Licensing Laws.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

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

**"§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Irrigation Contractors' Licensing Board.
- (1a) Business entity. – A person that is not an individual.
- (1b) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
- (1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.
- (1f) Foreign partnership. – One of the following that does not have a permanent place of business in this State:
  - a. A foreign limited partnership as defined in G.S. 59-102.
  - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.
- (3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.
- (4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow



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 this Chapter shall not apply to:

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

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.

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

4 "**§ 89G-5. Powers and duties.**

5 The Board shall have the following powers and duties:

6 ...  
7 (11) To require licensees to file and maintain an adequate surety ~~bond~~ bond or  
8 letter of credit.  
9 ...."

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

12 "**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

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

15 (1) For a corporation, one or more officers or full-time employees empowered to  
16 act for the corporation are individuals licensed under this Chapter and only  
17 the individuals licensed under this Chapter execute contracts for irrigation  
18 construction and irrigation contracting.

19 (2) For a limited liability, one or more managers or executives as defined in  
20 G.S. 57C-1-03 or full-time employees are individuals licensed under this  
21 Chapter and only the individuals licensed under this Chapter execute  
22 contracts for irrigation construction and irrigation contracting.

23 (3) For a partnership, one or more general partners or full-time employees  
24 empowered to act for the partnership 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 (4) For a business entity using an assumed name or designated trade name, the  
28 owner or one or more full-time employees empowered to act for the owner is  
29 an individual licensed under this Chapter and only the individuals licensed  
30 under this Chapter execute contracts for irrigation construction and irrigation  
31 contracting.

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

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

37 (1) For a foreign corporation, the corporation has obtained a certificate of  
38 authority from the Secretary of State pursuant to Article 15 of Chapter 55 of  
39 the General Statutes and complies with the requirements of subdivision  
40 (a)(1) of this section.

41 (2) For a foreign limited liability company, the company has obtained a  
42 certificate of authority from the Secretary of State pursuant to Article 7 of  
43 Chapter 57C of the General Statutes and complies with the requirements of  
44 subdivision (b)(1) of this section.

45 (3) For a foreign partnership, the partnership complies with the requirements of  
46 subdivision (c)(1) of this section.

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

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

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

7       (g) 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 **"§ 89G-6.2. Tax delinquency of nonresidents and foreign entities.**

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

22       (b) Delinquents. – If the Secretary of Revenue determines that any nonresident  
23 individual or foreign entity licensed by the Board owes a delinquent income tax debt, the  
24 Secretary of Revenue shall notify the Board of the delinquency. The Board shall not renew the  
25 license of a nonresident individual or foreign entity identified by the Secretary of Revenue  
26 unless the Board receives a written statement from the Secretary that (i) the debt has been paid  
27 or (ii) the debt is being paid pursuant to an installment agreement."

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

29 **"§ 89G-9. License renewal and continuing education.**

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

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

44       (c) The Board shall suspend an individual licensee's license for 60 days for failure to  
45 obtain continuing education units required by subsection (b) of this section. The Board shall  
46 suspend a business entity's or a foreign entity's license for 60 days for failure by the individual  
47 licensee required under G.S. 98G-6.1(a) to obtain continuing education units required by  
48 subsection (b) of this section. Upon completion of the required continuing education and  
49 payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual  
50 licensee to meet the education requirements, to request a reinstatement of the license, or to pay  
51 the reinstatement fee within the time provided shall result in the forfeiture of the license. Upon

1 forfeiture, ~~a person~~ an individual shall be required to submit a new application and retake the  
 2 examination as provided in this Chapter."

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

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

- |    |      |  |                                 |
|----|------|--|---------------------------------|
| 5  | (1)  | Application fee  | \$100.00                        |
| 6  | (2)  | Examination fee  | 200.00                          |
| 7  | (3)  | <del>License-Individual license fee and individual</del> |                                 |
| 8  |      | <u>license renewal fee</u>                               | 100.00                          |
| 9  | (3a) | <u>Business entity or foreign entity license fee and</u> |                                 |
| 10 |      | <u>business entity or foreign entity license renewal</u> |                                 |
| 11 |      | <u>fee</u>   | <u>100.00</u>                   |
| 12 | (4)  | Late renewal fee   | 50.00                           |
| 13 | (5)  | License by reciprocity                                   | 250.00                          |
| 14 | (6)  | <del>Corporate license</del> <u>Reinstatement fee</u>    | <del>100.00</del> <u>250.00</u> |
| 15 | (7)  | Duplicate license  | 25.00."                         |

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

17 "**§ 89G-11. Disciplinary action.**

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

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

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

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

40 **SECTION 9.** This act becomes effective October 1, 2011.