

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

H

D

HOUSE DRH70228-RFfq-5 (3/25)

Short Title: Landscape/Irrigation Contractors. (Public)

Sponsors: Representatives Gibson and McHenry (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE LAWS REGULATING LANDSCAPE CONTRACTORS, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 89D-1 through G.S. 89D-10 are repealed.

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

to read:

**"§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Landscape/Irrigation Contractors' Licensing Board.
- (2) Irrigation contractor. – Any person who, for compensation or other consideration, does any of the following:
  - a. Constructs, installs, or maintains landscape irrigation systems.
  - b. Constructs, installs, or maintains landscape drainage systems.
- (3) Irrigation construction or contracting. – The act of providing services as an irrigation contractor, as defined in this section, for compensation or other consideration.
- (4) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:
  - a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to install, plant, repair, and maintain gardens, lawns, shrubs, vines, trees, or other 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 horticultural consultation or planting design  
4 for employment purposes.

5 c. Constructs, installs, or maintains landscape 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 (5) Landscape construction or contracting. – The act of providing services  
10 as a landscape contractor, as defined in this section, for compensation  
11 or other consideration.

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

14 **"§ 89D-12. License required; use of seal; posting license.**

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

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

29 (c) Nothing in this Chapter shall be construed to authorize a landscape contractor  
30 to engage in the practice of landscape architecture as defined in G.S. 89A-1.

31 (d) Nothing in this Chapter shall be construed to authorize a landscape contractor  
32 to engage in the practice of engineering as defined in G.S. 89C-3.

33 (e) Nothing in this Chapter shall be construed to authorize a landscape contractor  
34 or irrigation contractor to practice as a well contractor certified under Article 7A of  
35 Chapter 87 of the General Statutes.

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

41 (g) Every landscape contractor or irrigation contractor issued a license under this  
42 Chapter shall display the license conspicuously in the contractor's place of business.  
43 Every landscape contractor and every irrigation contractor shall display the license

1 number issued to the contractor by the Board on all business cards, contracts, and  
2 vehicles used by the contractor in the landscape or irrigation contracting business.

3 **"§ 89D-13. Exemptions.**

4 (a) The provisions in this Chapter shall not apply to:

- 5 (1) Any federal, State, or local governmental agency performing  
6 landscape work on public property.
- 7 (2) Any property owner performing landscape or irrigation work on his or  
8 her own property.
- 9 (3) Any person performing landscape work where the price of all contracts  
10 for labor, material, and other items for a given jobsite during any  
11 consecutive 12-month period is less than seven thousand five hundred  
12 dollars (\$7,500).
- 13 (4) Any person performing irrigation work where the price of all contracts  
14 for labor, material, and other items for a given jobsite during any  
15 consecutive 12-month period is less than one thousand five hundred  
16 dollars (\$1,500).
- 17 (5) Any person or business licensed pursuant to Article 1 of Chapter 87 of  
18 the General Statutes.
- 19 (6) A professional engineer licensed pursuant to Chapter 89C of the  
20 General Statutes.

21 (b) An individual or a business engaged in the following activities shall not be  
22 required to obtain a license under this Article for performing that activity only:

- 23 (1) Clearing and grading plots and areas of land.
- 24 (2) Erosion control.
- 25 (3) Arboriculture, including consultations on pruning and removal of  
26 trees.
- 27 (4) Seed and sod installation.
- 28 (5) Landscape construction engaged in by utilities contractors for the  
29 purpose of grading and erosion control.
- 30 (6) Irrigation work relating to agriculture or aquaculture as defined in  
31 Chapter 106 of the General Statutes.
- 32 (7) Irrigation work related to municipal or industrial wastewater,  
33 excluding reuse water application.
- 34 (8) Irrigation work relating to municipal stormwater.
- 35 (9) Lawn mowing, turf edging, debris blowing, or debris removal services.
- 36 (10) Design, installation, and maintenance of on-site wastewater disposal or  
37 reuse systems within the on-site wastewater permit specifications.
- 38 (11) Landscape architectural services provided by a person licensed under  
39 Chapter 89A of the General Statutes.
- 40 (12) Plumbing work performed by a person licensed under Article 2 of  
41 Chapter 87 of the General Statutes.
- 42 (13) Landscape or irrigation or design work performed in the scope of  
43 employment on property owned or under the control of the employer.

1 "§ 89D-14. The North Carolina Landscape/Irrigation Contractors' Licensing  
2 Board.

3 (a) The North Carolina Landscape/Irrigation Contractors' Licensing Board is  
4 created. The Board shall consist of nine members who are appointed as follows: one  
5 member by the Governor, one member by the President Pro Tempore of the Senate, one  
6 member by the Speaker of the House of Representatives, one member by the  
7 Commissioner of Agriculture, one member by the North Carolina Association of  
8 Nurserymen, Inc., two members by the North Carolina Landscape Association, Inc., one  
9 member by the North Carolina Chapter of the American Society of Landscape  
10 Architects, and one member by the Carolinas Irrigation Association. The members shall  
11 be appointed as follows:

12 (1) The Governor shall appoint an at-large appointee.

13 (2) The President Pro Tempore of the Senate shall appoint a licensed  
14 irrigation contractor in the business of irrigation construction or  
15 contracting, as recommended by the North Carolina Irrigation Society.

16 (3) The Speaker of the House of Representatives shall appoint a licensed  
17 landscape contractor in the business of landscape construction or  
18 contracting.

19 (4) The Commissioner of Agriculture appoint a person recommended by  
20 the Carolinas Irrigation Association.

21 (5) The Board of Directors of the North Carolina Association of  
22 Nurserymen, Inc., shall appoint a practicing nurseryman operating a  
23 nursery certified by the North Carolina Department of Agriculture and  
24 Consumer Services Plant Pest Inspection Program.

25 (6) The Board of Directors of the North Carolina Landscape Association,  
26 Inc., shall appoint:

27 a. A licensed landscape contractor in the business of landscape  
28 construction or contracting.

29 b. A licensed landscape contractor in the business of landscape  
30 construction or contracting.

31 (7) The North Carolina Chapter of the American Society of Landscape  
32 Architects shall appoint a registered landscape architect.

33 (8) The Carolinas Irrigation Association shall appoint a licensed irrigation  
34 contractor in the business of irrigation construction or contracting.

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

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

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

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

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

9 **"§ 89D-15. Powers and duties.**

10 The Board shall have the following powers and duties:

- 11       (1) To administer and enforce the provisions of this Chapter.
- 12       (2) To adopt, amend, or repeal rules to carry out the provisions of this  
13 Chapter.
- 14       (3) To examine and determine the qualifications and fitness of applicants  
15 for licensure and licensure renewal.
- 16       (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- 17       (5) To receive and investigate complaints from members of the public.
- 18       (6) To conduct investigations to determine whether violations of this  
19 Chapter exist or constitute grounds for disciplinary action against  
20 licensees under this Chapter.
- 21       (7) To conduct administrative hearings in accordance with Article 3A of  
22 Chapter 150B of the General Statutes.
- 23       (8) To establish and approve continuing education requirements for  
24 persons licensed under this Chapter.
- 25       (9) To employ a secretary-treasurer, clerical personnel, and others the  
26 Board deems necessary to carry out the provisions of this Chapter.
- 27       (10) To fix compensation for employees.
- 28       (11) To maintain a record of all proceedings conducted by the Board and  
29 make available to licensees and other concerned parties an annual  
30 report of all Board action.
- 31       (12) To adopt and publish a code of professional conduct for all persons  
32 licensed under this Chapter.
- 33       (13) To adopt and publish a code of minimum practice standards for  
34 landscape and irrigation construction.
- 35       (14) To adopt a seal containing the name of the Board for use on licenses  
36 and official reports issued by the Board.

37 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

38       (a) Upon application to the Board and the payment of the required fees, an  
39 applicant may sit for the examination under this Chapter as a landscape contractor or an  
40 irrigation contractor if the applicant submits evidence that demonstrates his or her  
41 qualifications as prescribed in rules adopted by the Board and meets all of the following  
42 qualifications:

- 43       (1) Is at least 18 years of age.
- 44       (2) Is of good moral character as determined by the Board.

1           (3) For a landscape contractor's license, has at least three years of  
2 experience in landscape construction or contracting or the educational  
3 equivalent. For an irrigation contractor's license, has at least three  
4 years of experience in irrigation construction or contracting or the  
5 educational equivalent. Two years of educational training in landscape  
6 construction or contracting or irrigation construction or contracting  
7 shall be the equivalent of one year of experience.

8           (4) Files with the Board and maintains a corporate surety bond executed  
9 by a company authorized to do business in this State or an irrevocable  
10 letter of credit issued by an insured institution. The surety bond or the  
11 letter of credit shall be in the amount of seven thousand five hundred  
12 dollars (\$7,500). The surety bond or letter of credit shall be approved  
13 by the Board as to form and shall be conditioned upon the obligor's  
14 faithfully conforming to and abiding by the provisions of this Chapter.  
15 Any person claiming to be injured by an act of a licensed landscape  
16 contractor or a licensed irrigation contractor that constitutes a violation  
17 of this Chapter may institute an action to recover against the licensee  
18 and the surety.

19           (b) If the applicant meets all the qualifications in subsection (a) of this section,  
20 the applicant shall be required to pass an examination administered by the Board before  
21 the Board may issue the license. The Board shall establish the scope and subject matter  
22 of the examination to be administered. The Board shall recognize the Certified  
23 Irrigation Contractor (CIC) examination, or any other comparable examination, as an  
24 approved examination to become licensed as an irrigation contractor.

25           (c) Examinations shall be held at least twice a year at a time and place to be  
26 determined by the Board.

27           (d) When the Board determines that an applicant has met all the qualifications for  
28 licensure and has submitted the required fee, the Board shall issue a license to the  
29 applicant.

30           (e) The Board may issue a license in the name of a corporation provided one or  
31 more of the officers or full-time employees that are empowered to act for the  
32 corporation are licensed in accordance with the provisions of this Chapter. In addition to  
33 the provisions of this Chapter, a corporation shall do all of the following when a license  
34 is issued in the name of the corporation:

35               (1) The officer or full-time employee licensed under this Chapter who is  
36 empowered to act for the corporation shall execute contracts in the  
37 name of the corporation to the extent of the license qualifications of  
38 the individual.

39               (2) The officer or full-time employee licensed under this Chapter shall  
40 exercise general supervision over the landscape or irrigation work  
41 performed under the contract.

42           (f) An individual desiring to construct, install, or maintain landscape drainage  
43 systems shall not be required to hold both an irrigation contractor's license and a  
44 landscape contractor's license.

1       (g) Persons who had an established place of business prior to January 1, 2004,  
2 and who produce satisfactory evidence that they are engaged in the landscape business  
3 as defined in G.S. 89D-11 and were not registered under G.S. 89D-1 through G.S.  
4 89D-10, may apply for a landscape contractor's provisional license on or before July 1,  
5 2004. The Board shall issue a provisional license, valid up to July 1, 2006, if the  
6 applicant meets the qualifications under subdivisions (a)(1), (a)(2), and (a)(4) of this  
7 section and pays the proper fee. Before the Board may issue a license, the applicant  
8 must pass the examination under subsection (b) of this section after gaining the  
9 experience required under subdivision (a)(3) of this section.

10       (h) Persons who had an established place of business prior to January 1, 2004,  
11 and who produce satisfactory evidence that they are engaged in the irrigation business  
12 as defined in G.S. 89D-11 and were not registered as a landscape contractor under G.S.  
13 89D-1 through G.S. 89D-10 or were not qualified to receive an irrigation contractor's  
14 license on January 1, 2004, may apply for an irrigation contractor's provisional license  
15 on or before July 1, 2004. The Board shall issue a provisional license, valid up to July 1,  
16 2006, if the applicant meets the qualifications under subdivisions (a)(1), (a)(2), and  
17 (a)(4) of this section and pays the proper fee. Before the Board may issue a license, the  
18 applicant must pass the examination under subsection (b) of this section after gaining  
19 the experience required under subdivision (a)(3) of this section.

20 **"§ 89D-17. Reciprocity.**

21       The Board may issue a license, without examination, to any person who is a  
22 landscape contractor or irrigation contractor licensed, certified, or registered in another  
23 state or country if the requirements for licensure, certification, or registration in the  
24 other state or country are substantially equivalent to the requirements for licensure in  
25 this State.

26 **"§ 89D-18. License renewal and continuing education.**

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

38       (b) As a condition of license renewal, a licensee must meet the continuing  
39 education requirements set by the Board. Failure to obtain continuing education units  
40 shall result in the forfeiture of a license.

41       (c) Upon forfeiture, a person shall be required to submit a new application and  
42 retake the examination as provided in this Chapter.

43 **"§ 89D-19. Expenses and fees.**

1 (a) For licenses and provisional licenses, the Board may impose the following  
2 fees not to exceed the amounts listed below:

- 3 (1) Application fee .....\$100.00
- 4 (2) Examination fee .....100.00
- 5 (3) License renewal .....100.00
- 6 (4) Late renewal fee .....50.00
- 7 (5) License by reciprocity .....250.00
- 8 (6) Corporate license .....100.00
- 9 (7) Duplicate license.....25.00.

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

13 **"§ 89D-20. Disciplinary action.**

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

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

33 **"§ 89D-21. Civil penalties.**

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

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

- 42 (1) The nature, gravity, and persistence of the particular violation.
- 43 (2) The appropriateness of the imposition of a civil penalty when  
44 considered alone or in combination with other punishment.



1           (3) Whether the violation was willful and malicious.

2           (4) Any other factors that would tend to mitigate or aggravate the  
3           violations found to exist.

4 **"§ 89D-22. Injunction to prevent violation; notification of complaints.**

5           (a) If the Board finds that a person who does not have a license issued under this  
6 Chapter is engaging in the practice of landscape construction or contracting or irrigation  
7 construction or contracting, the Board may appear in its own name in superior court in  
8 actions for injunctive relief to prevent any person from violating the provisions of this  
9 Chapter or the rules adopted by the Board.

10          (b) A licensed landscape contractor or licensed irrigation contractor shall notify  
11 the Board, by registered mail, of any written complaints regarding a job related to  
12 landscape or irrigation work filed against the landscape contractor or irrigation  
13 contractor within 30 days from the date the complaint was filed."

14           **SECTION 3.** Any person already registered as a landscape contractor on  
15 December 31, 2003, shall be issued a landscape contractor's license, without the  
16 requirement of examination, upon submission of a completed application and payment  
17 of the application fee on or before April 1, 2004. Landscape contractors registered  
18 under Chapter 89D of the General Statutes shall not be required to renew the  
19 registration for calendar year 2004 to qualify for the landscape contractor's license.

20           **SECTION 4.** Any person who has obtained a Certified Irrigation Contractor  
21 (CIC) certification through the Carolinas Irrigation Association or who has obtained a  
22 Certified Irrigation Designer (CID) certification on the effective date of this act shall be  
23 issued an irrigation contractor's license, without the requirement of examination, upon  
24 submission of a completed application and payment of the application fee on or before  
25 April 1, 2004.

26           **SECTION 5.** Members serving on the North Carolina Landscape  
27 Contractors' Registration Board on the effective date of this act shall continue to serve  
28 until the North Carolina Landscape/Irrigation Contractors' Licensing Board is  
29 appointed. All records, staff, funds, and other items of the North Carolina Landscape  
30 Contractors' Registration Board are transferred to and made the property of the North  
31 Carolina Landscape/Irrigation Contractors' Licensing Board.

32           **SECTION 6.** At its discretion, the Board may grant, without the requirement  
33 of examination, an irrigation contractor's license to a registered landscape contractor or  
34 a person who has obtained a Certified Landscape Irrigation Auditor (CLIA) certification  
35 through the Carolinas Irrigation Association and has three years of experience in  
36 irrigation contracting.

37           **SECTION 7.** This act becomes effective January 1, 2004.