

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 947

Short Title: Landscape/Irrigation Contractors. (Public)

Sponsors: Representatives Gibson and McHenry (Primary Sponsors).

Referred to: Finance.

April 8, 2003

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, AND TO AUTHORIZE
5 THE BOARD TO INCREASE FEES.

6 The General Assembly of North Carolina enacts:

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 G.S. 89D-1 through G.S. 89D-10 are repealed.

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

9 to read:

10 "**§ 89D-11. Definitions.**

11 The following definitions apply in this Chapter:

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

- 1 b. Practices the act of horticultural consultation or planting design
2 for employment purposes.
3 c. Constructs, installs, or maintains landscape drainage systems.
4 d. Engages in the incidental construction of garden pools,
5 fountains, pavilions, conservatories, hothouses and
6 greenhouses, retaining walls, fences, or walks.

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

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

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

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

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

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

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

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

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

39 (g) Every landscape contractor or irrigation contractor issued a license under this
40 Chapter shall display the license conspicuously in the contractor's place of business.
41 Every landscape contractor and every irrigation contractor shall display the license
42 number issued to the contractor by the Board on all business cards, contracts, and
43 vehicles used by the contractor in the landscape or irrigation contracting business.

44 **"§ 89D-13. Exemptions.**

- 1 (a) The provisions in this Chapter shall not apply to:
2 (1) Any federal, State, or local governmental agency performing
3 landscape work on public property.
4 (2) Any property owner performing landscape or irrigation work on his or
5 her own property.
6 (3) Any person performing landscape work where the price of all contracts
7 for labor, material, and other items for a given jobsite during any
8 consecutive 12-month period is less than seven thousand five hundred
9 dollars (\$7,500).
10 (4) Any person performing irrigation work where the price of all contracts
11 for labor, material, and other items for a given jobsite during any
12 consecutive 12-month period is less than one thousand five hundred
13 dollars (\$1,500).
14 (5) Any person or business licensed pursuant to Article 1 of Chapter 87 of
15 the General Statutes.
16 (6) A professional engineer licensed pursuant to Chapter 89C of the
17 General Statutes.
18 (b) An individual or a business engaged in the following activities shall not be
19 required to obtain a license under this Article for performing that activity only:
20 (1) Clearing and grading plots and areas of land.
21 (2) Erosion control.
22 (3) Arboriculture, including consultations on pruning and removal of
23 trees.
24 (4) Seed and sod installation.
25 (5) Landscape construction engaged in by utilities contractors for the
26 purpose of grading and erosion control.
27 (6) Irrigation work relating to agriculture or aquaculture as defined in
28 Chapter 106 of the General Statutes.
29 (7) Irrigation work related to municipal or industrial wastewater,
30 excluding reuse water application.
31 (8) Irrigation work relating to municipal stormwater.
32 (9) Lawn mowing, turf edging, debris blowing, or debris removal services.
33 (10) Design, installation, and maintenance of on-site wastewater disposal or
34 reuse systems within the on-site wastewater permit specifications.
35 (11) Landscape architectural services provided by a person licensed under
36 Chapter 89A of the General Statutes.
37 (12) Plumbing work performed by a person licensed under Article 2 of
38 Chapter 87 of the General Statutes.
39 (13) Landscape or irrigation or design work performed in the scope of
40 employment on property owned or under the control of the employer.

41 **§ 89D-14. The North Carolina Landscape/Irrigation Contractors' Licensing**
42 **Board.**

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

1 member by the Governor, one member by the President Pro Tempore of the Senate, one
2 member by the Speaker of the House of Representatives, one member by the
3 Commissioner of Agriculture, one member by the North Carolina Association of
4 Nurserymen, Inc., two members by the North Carolina Landscape Association, Inc., one
5 member by the North Carolina Chapter of the American Society of Landscape
6 Architects, and one member by the Carolinas Irrigation Association. The members shall
7 be appointed as follows:

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

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

12 (3) The Speaker of the House of Representatives shall appoint a licensed
13 landscape contractor in the business of landscape construction or
14 contracting.

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

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

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

23 a. A licensed landscape contractor in the business of landscape
24 construction or contracting.

25 b. A licensed landscape contractor in the business of landscape
26 construction or contracting.

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

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

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

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

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

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

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

4 **"§ 89D-15. Powers and duties.**

5 The Board shall have the following powers and duties:

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

32 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

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

- 38 (1) Is at least 18 years of age.
- 39 (2) Is of good moral character as determined by the Board.
- 40 (3) For a landscape contractor's license, has at least three years of
41 experience in landscape construction or contracting or the educational
42 equivalent. For an irrigation contractor's license, has at least three
43 years of experience in irrigation construction or contracting or the
44 educational equivalent. Two years of educational training in landscape

1 construction or contracting or irrigation construction or contracting
2 shall be the equivalent of one year of experience.

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

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

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

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

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

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

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

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

40 (g) Persons who had an established place of business prior to January 1, 2004,
41 and who produce satisfactory evidence that they are engaged in the landscape business
42 as defined in G.S. 89D-11 and were not registered under G.S. 89D-1 through G.S.
43 89D-10, may apply for a landscape contractor's provisional license on or before July 1,
44 2004. The Board shall issue a provisional license, valid up to July 1, 2006, if the

1 applicant meets the qualifications under subdivisions (a)(1), (a)(2), and (a)(4) of this
2 section and pays the proper fee. Before the Board may issue a license, the applicant
3 must pass the examination under subsection (b) of this section after gaining the
4 experience required under subdivision (a)(3) of this section.

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

15 **"§ 89D-17. Reciprocity.**

16 The Board may issue a license, without examination, to any person who is a
17 landscape contractor or irrigation contractor licensed, certified, or registered in another
18 state or country if the requirements for licensure, certification, or registration in the
19 other state or country are substantially equivalent to the requirements for licensure in
20 this State.

21 **"§ 89D-18. License renewal and continuing education.**

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

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

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

38 **"§ 89D-19. Expenses and fees.**

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

41	<u>(1) Application fee</u>	<u>\$100.00</u>
42	<u>(2) Examination fee</u>	<u>100.00</u>
43	<u>(3) License renewal</u>	<u>100.00</u>
44	<u>(4) Late renewal fee</u>	<u>50.00</u>

- 1 (5) License by reciprocity250.00
- 2 (6) Corporate license100.00
- 3 (7) Duplicate license.....25.00.

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

7 **"§ 89D-20. Disciplinary action.**

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

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

27 **"§ 89D-21. Civil penalties.**

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

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

- 36 (1) The nature, gravity, and persistence of the particular violation.
- 37 (2) The appropriateness of the imposition of a civil penalty when
38 considered alone or in combination with other punishment.
- 39 (3) Whether the violation was willful and malicious.
- 40 (4) Any other factors that would tend to mitigate or aggravate the
41 violations found to exist.

42 **"§ 89D-22. Injunction to prevent violation; notification of complaints.**

43 (a) If the Board finds that a person who does not have a license issued under this
44 Chapter is engaging in the practice of landscape construction or contracting or irrigation

1 construction or contracting, the Board may appear in its own name in superior court in
2 actions for injunctive relief to prevent any person from violating the provisions of this
3 Chapter or the rules adopted by the Board.

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

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

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

20 **SECTION 5.** Members serving on the North Carolina Landscape
21 Contractors' Registration Board on the effective date of this act shall continue to serve
22 until the North Carolina Landscape/Irrigation Contractors' Licensing Board is
23 appointed. All records, staff, funds, and other items of the North Carolina Landscape
24 Contractors' Registration Board are transferred to and made the property of the North
25 Carolina Landscape/Irrigation Contractors' Licensing Board.

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

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