

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1408

Short Title: Rewrite Landscape Contractor Laws. (Public)

Sponsors: Representatives Gibson; and Lucas.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT REWRITING THE LAWS REGULATING LANDSCAPE CONTRACTORS AND
3 AUTHORIZING THE NORTH CAROLINA LANDSCAPE CONTRACTORS'
4 LICENSING BOARD TO INCREASE FEES.

5 The General Assembly of North Carolina enacts:

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 G.S. 89D-1 through 89D-10 are repealed.

7 SECTION 2. Chapter 89D is amended by adding the following new sections to
8 read:

9 **"§ 89D-11. Definitions.**

10 The following definitions apply in this Chapter:

11 (1) Board. – The North Carolina Landscape Contractors' Licensing Board.

12 (2) Landscape contractor. – Any person who, for compensation or other
13 consideration, does any of the following:

14 a. Engages in the business requiring the art, experience, ability,
15 knowledge, science, and skill to install, plant, repair, and maintain
16 gardens, lawns, shrubs, vines, trees, or other decorative vegetation,
17 including the grading and preparation of plots and areas of land for
18 decorative treatment and arrangement.

19 b. Practices the act of horticulture consultation or planting design for
20 employment purposes.

21 c. Constructs, installs, or maintains landscape drainage systems.

22 d. Engages in the incidental construction of garden pools, fountains,
23 pavilions, conservatories, hothouses and greenhouses, retaining
24 walls, fences, or walks.

25 (3) Landscape construction or contracting. – The act of providing services as a
26 landscape contractor, as defined in this section, for compensation or other
27 consideration.

28 (4) Person. – An individual, firm, partnership, association, corporation, or other
29 legal entity.

30 **"§ 89D-12. License required; use of seal; posting license.**

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

37 (b) Nothing in this Chapter shall be construed to authorize a landscape contractor to:



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- 1 (1) Engage in the practice of landscape architecture as defined in G.S. 89A-1.
- 2 (2) Engage in the practice of engineering as defined in G.S. 89C-3.
- 3 (3) Engage in practice as a well contractor certified under Article 7A of Chapter
- 4 87 of the General Statutes.

5 (c) Upon licensure by the Board, each landscape contractor shall obtain a seal of the
6 design authorized by the Board and bearing the name of the licensee, the number of the license,
7 and the legend 'N.C. Licensed Landscape Contractor.' A landscape contractor may use the seal
8 only while the license is valid.

9 (d) Every landscape contractor issued a license under this Chapter shall display the
10 license conspicuously in the landscape contractor's place of business. Every landscape
11 contractor shall display the license number issued to the contractor by the Board on all business
12 cards, contracts, and vehicles used by the contractor in the landscape contracting business.

13 **"§ 89D-13. Exemptions.**

14 The provisions in this Chapter shall not apply to:

- 15 (1) Any federal, State, or local governmental agency performing landscaping on
16 public property.
- 17 (2) Any property owner performing landscape work on his or her own property.
- 18 (3) Any landscaping work where the price of all contracts for labor, material,
19 and other items for a given jobsite during any consecutive 12-month period
20 is less than seven thousand five hundred dollars (\$7,500).
- 21 (4) Any person or business licensed pursuant to Article 1 of Chapter 87 of the
22 General Statutes.
- 23 (5) A professional engineer licensed pursuant to Chapter 89C of the General
24 Statutes.
- 25 (6) A professional landscape architect licensed under Chapter 89A of the
26 General Statutes.
- 27 (7) An individual or a business engaged in any of the following activities for
28 performing that activity:
 - 29 a. Clearing and grading plots and areas of land.
 - 30 b. Erosion control.
 - 31 c. Arboriculture, including consultations on pruning and removal of
32 trees.
 - 33 d. Seed and sod installation.
 - 34 e. Landscape construction performed by utilities contractors for the
35 purpose of grading and erosion control.
 - 36 f. Lawn mowing, turf edging, debris blowing, or debris removal
37 services.
 - 38 g. Design, installation, and maintenance of on-site wastewater disposal
39 or reuse systems within the on-site wastewater permit specifications.
 - 40 h. Landscape or design work performed in the scope of employment on
41 property owned or under the control of the employer.

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

43 (a) There is created the North Carolina Landscape Contractors' Licensing Board. The
44 Board shall consist of nine members appointed as follows:

- 45 (1) One member appointed by the Governor who is a member of the general
46 public.
- 47 (2) One member appointed by the Commissioner of Agriculture.
- 48 (3) Two members appointed by the Board of Directors of the North Carolina
49 Association of Nurserymen, Inc., who are practicing nurserymen operating a
50 nursery certified by the North Carolina Department of Agriculture and
51 Consumer Services Plant Pest Inspection Program.

1 (4) Four members who are licensed landscape contractors in the business of
2 landscape construction or contracting. One of the four members shall be
3 appointed by the General Assembly upon the recommendation of the
4 Speaker of the House of Representatives; one shall be appointed by the
5 General Assembly upon the recommendation of the President Pro Tempore
6 of the Senate; and two shall be appointed by the Board of Directors of the
7 North Carolina Landscape Association, Inc.

8 (5) One member appointed by the Board of Directors of the North Carolina
9 Chapter of the American Society of Landscape Architects who is a
10 registered landscape architect.

11 (b) All appointments shall be for three-year terms. No member shall serve more than
12 two complete consecutive terms.

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

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

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

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

26 **"§ 89D-15. Powers and duties.**

27 The Board shall have the following powers and duties to:

28 (1) Administer and enforce the provisions of this Chapter.

29 (2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

30 (3) Examine and determine the qualifications and fitness of applicants for
31 licensure and licensure renewal.

32 (4) Issue, renew, deny, restrict, suspend, or revoke licenses.

33 (5) Reprimand or otherwise discipline licensees under this Chapter.

34 (6) Receive and investigate complaints from members of the public.

35 (7) Conduct investigations to determine whether violations of this Chapter exist
36 or constitute grounds for disciplinary action against licensees under this
37 Chapter.

38 (8) Conduct administrative hearings in accordance with Article 3A of Chapter
39 150B of the General Statutes.

40 (9) Seek injunctive relief through any court of competent jurisdiction for
41 violations of this Chapter.

42 (10) Collect fees required by G.S. 89D-19 and any other monies permitted by law
43 to be paid to the Board.

44 (11) Require licensees to file and maintain an adequate surety bond.

45 (12) Establish and approve continuing education requirements for persons
46 licensed under this Chapter.

47 (13) Employ a secretary-treasurer and any other clerical personnel the Board
48 deems necessary to carry out the provisions of this Chapter and to fix
49 compensation for employees.

- 1 (14) Maintain a record of all proceedings conducted by the Board and make
2 available to licensees and other concerned parties an annual report of all
3 Board action.
- 4 (15) Adopt and publish a code of professional conduct for all persons licensed
5 under this Chapter.
- 6 (16) Adopt and publish a code of minimum practice standards for landscape
7 construction and contracting.
- 8 (17) Adopt a seal containing the name of the Board for use on licenses and
9 official reports issued by the Board.

10 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

11 (a) Upon application to the Board and payment of the required fees, an applicant for
12 licensure as a landscape contractor may sit for the examination if the applicant submits
13 evidence demonstrating the applicant's qualifications for licensure under this Chapter as
14 prescribed in rules adopted by the Board and meets all of the following qualifications:

- 15 (1) Is at least 18 years of age.
- 16 (2) Is of good moral character as determined by the Board.
- 17 (3) Has at least three years of experience in landscape construction or
18 contracting or the educational equivalent. Two years of educational training
19 in landscape construction or contracting shall be the equivalent of one year
20 of experience.
- 21 (4) Files with the Board and maintains a corporate surety bond executed by a
22 company authorized to do business in this State or an irrevocable letter of
23 credit issued by an insured institution. The surety bond or the letter of credit
24 shall be in the amount of seven thousand five hundred dollars (\$7,500). The
25 surety bond or letter of credit shall be approved by the Board as to form and
26 shall be conditioned upon the obligor faithfully conforming to and abiding
27 by the provisions of this Chapter. Any person claiming to be injured by an
28 act of a licensed landscape contractor that constitutes a violation of this
29 Chapter may institute an action to recover against the licensee and the
30 surety.

31 (b) If the applicant meets all the qualifications in subsection (a) of this section, the
32 applicant shall be required to pass an examination administered by the Board before the Board
33 may issue the license. The Board shall establish the scope and subject matter of the
34 examination to be administered. The Board shall administer examinations at least twice a year
35 at a time and place to be determined by the Board.

36 (c) When the Board determines that an applicant has met all the qualifications for
37 licensure, submitted the required fee, and passed the examination, the Board shall issue a
38 license to the applicant.

39 **"§ 89D-17. Reciprocity.**

40 The Board may issue a license, without examination, to any person who is a landscape
41 contractor licensed, certified, or registered in another state or country if the requirements for
42 licensure, certification, or registration in the other state or country are substantially equivalent
43 to the requirements for licensure in this State.

44 **"§ 89D-18. License renewal and continuing education.**

45 (a) Every license issued under this Chapter shall be renewed on or before the 31st day of
46 December of each year. Any person who desires to continue to practice shall apply for a license
47 renewal and shall submit the required fee. Licenses that are not renewed shall be automatically
48 revoked. A license may be renewed at any time within one year after its expiration, if: (i) the
49 applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the
50 applicant has not used the license in a manner inconsistent with the provisions of this Chapter
51 or engaged in the practice of landscape construction or contracting after notice of revocation;

1 and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter.
2 When necessary, the Board may require licensees to demonstrate continued competence as a
3 condition of license renewal.

4 (b) As a condition of license renewal, a licensee shall meet the continuing education
5 requirements set by the Board. Failure to obtain continuing education units shall result in the
6 forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application
7 and retake the examination as provided in this Chapter.

8 **"§ 89D-19. Expenses and fees.**

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

- 10 (1) Application fee..... \$100.00
- 11 (2) Examination fee 100.00
- 12 (3) License renewal..... 100.00
- 13 (4) Late renewal fee 50.00
- 14 (5) License by reciprocity 250.00
- 15 (6) Corporate license..... 100.00
- 16 (7) Duplicate license 25.00

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

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

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

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

38 **"§ 89D-21. Civil penalties.**

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

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

- 46 (1) The nature, gravity, and persistence of the particular violation.
- 47 (2) The appropriateness of the imposition of a civil penalty when considered
48 alone or in combination with other punishment.
- 49 (3) Whether the violation was willful and malicious.
- 50 (4) Any other factors that would tend to mitigate or aggravate the violations
51 found to exist.

1 **"§ 89D-22. Injunction to prevent violation; notification of complaints.**

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

6 (b) A licensed landscape contractor shall notify the Board of any complaints filed
7 against the landscape contractor within 30 days from the date the complaint was filed by
8 registered mail to the Board."

9 **SECTION 2.** Any person already registered as a landscape contractor on
10 December 31, 2009, shall be issued a landscape contractor's license, without the requirement of
11 examination, upon submission of a completed application and payment of the application fee
12 on or before April 1, 2010. Landscape contractors registered under Chapter 89D of the General
13 Statutes shall not be required to renew the registration for calendar year 2002 to qualify for the
14 landscape contractor's license.

15 **SECTION 3.(a)** Members serving on the North Carolina Landscape Contractors'
16 Registration Board on the effective date of this act shall continue to serve until the North
17 Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as
18 enacted by Section 2 of this act, is appointed.

19 **SECTION 3.(b)** Once the term of one of the current public members appointed by
20 the Governor expires, the General Assembly, upon the recommendation of the Speaker of the
21 House of Representatives, shall appoint a licensed landscape contractor in the business of
22 landscape construction and contracting. Once the term of one of the current members appointed
23 by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation
24 of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the
25 business of landscape construction and contracting. All records, staff, funds, and other items of
26 the North Carolina Landscape Contractors' Registration Board are transferred to and made the
27 property of the North Carolina Landscape Contractors' Licensing Board.

28 **SECTION 4.** This act becomes effective January 1, 2010.