

SENATE, No. 2745

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED APRIL 27, 2009

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Revises “Landscape Irrigation Contractor Certification Act of 1991.”

CURRENT VERSION OF TEXT

As introduced.



S2745 SWEENEY

2

1 AN ACT concerning landscape irrigation contractors and amending
2 and supplementing P.L.1991, c.27.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1991, c.27 (C.45:5AA-2) is amended to
8 read as follows:

9 2. As used in this act:

10 a. "Board" means the Landscape Irrigation Contractors
11 Examining Board established pursuant to section 5 of this act.

12 b. "Department" means the Department of Environmental
13 Protection.

14 c. "Landscape irrigation contracting" means the construction,
15 repair, maintenance, improvement and alteration of any portion of a
16 landscape irrigation system, including required wiring within that
17 system and connection to the required power supply and the
18 installation and connection to a public or private water supply
19 system under the terms and conditions of a contract.

20 d. "Landscape irrigation contractor" means a person who is
21 certified to do landscape irrigation contracting.

22 e. "Landscape irrigation contractor certificate" or "certificate"
23 means the certificate issued by the board pursuant to the provisions
24 of this act.

25 f. "Landscape irrigation system" means any assemblage of
26 components, materials or special equipment which is designed,
27 constructed and installed for controlled dispersion of water from
28 any safe and suitable source, including properly treated wastewater,
29 for the purpose of irrigating landscape vegetation or the control of
30 dust and erosion on landscaped areas, including integral pumping
31 systems or integral control systems for manual, semi-automatic or
32 automatic control of the operation of these systems.

33 g. "Business permit" means the permit issued by the board to a
34 company allowing the company to engage in the business of
35 landscape irrigation contracting, pursuant to the provisions of
36 P.L.1991, c.27 (C.45:5AA-1 et seq.).

37 (cf: P.L.1991, c.27, s.2)

38

39 2. Section 3 of P.L.1991, c.27 (C.45:5AA-3) is amended to
40 read as follows:

41 3. a. **[No person shall engage in the business of landscape**
42 **irrigation contracting without securing from the board a landscape**
43 **irrigation contractor certificate in accordance with the provisions of**
44 **this act; except that officers,]** No company shall advertise, enter
45 into or engage in the business of landscape irrigation contracting

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 unless the company has first secured a business permit from the
2 board and employs at least one certified landscape irrigation
3 contractor. Any single act or transaction, including the advertising
4 of available services, shall constitute engaging in the business of
5 landscape irrigation contracting.

6 b. Officers, employees, and duly authorized representatives of
7 the United States, the State, or any political subdivision thereof
8 performing work on the property of the public entity; vendors of
9 landscape irrigation components, materials, or equipment who
10 perform only such functions as delivery, rendering of advice or
11 assistance in the installation or normal warranty service or
12 exchange of defective or damaged goods; contractors engaged in
13 the design, fabrication, installation or construction of irrigation
14 apparatus, or irrigation equipment of any type which is to be used
15 solely for agricultural purposes in the production of harvestable and
16 saleable vegetative or animal products; plumbing contractors as
17 defined by section 2 of P.L.1968, c.362 (C.45:14C-2); and
18 [persons] employees engaged in landscape irrigation contracting
19 [solely as an employee of a landscape irrigation contractor] for a
20 company which has at least one certified landscape irrigation
21 contractor, are exempt from the requirement of a certificate
22 imposed by this act.

23 [b.] c. If a landscape irrigation system is connected to a potable
24 water supply, the landscape irrigation contractor's connection is to
25 begin at the downstream side of a properly installed backflow
26 prevention device as required by the Plumbing Subcode of the
27 Uniform Construction Code adopted pursuant to section 5 of the
28 "State Uniform Construction Code Act," P.L.1975, c.217
29 (C.52:27D-123).

30 d. (1) Landscape contractors are exempt from obtaining a
31 certificate as provided in P.L.1991, c.27 (C.45:5AA-1 et seq.) when
32 replacing sprinkler heads damaged during lawn mowing or grounds
33 maintenance or when making minor incidental repairs to sprinkler
34 pipng damaged during landscape construction.

35 (2) The exemption provided in paragraph (1) of this subsection
36 shall not apply to the installation of automatic controllers, electric
37 or hydraulic control valves, drip irrigation systems and micro-
38 irrigation systems, or to the performance of irrigation system
39 service or maintenance.

40 [c.] e. Nothing in this act shall be construed to prevent
41 individuals licensed or certified in this State under any other law
42 from engaging in the profession for which they are licensed or
43 certified.

44 (cf: P.L.1991, c.27, s.3)

45

46 3. Section 4 of P.L.1991, c.27 (C.45:5AA-4) is amended to
47 read as follows:

48 4. A person seeking certification as a landscape irrigation

1 contractor shall apply therefor on forms prescribed and provided by
2 the board, and pay the application fee established by the board. In
3 addition to any other information or documents that may be
4 required by the board, each applicant shall submit satisfactory
5 evidence that the applicant is ~~of good moral character, is~~ at least
6 18 years of age, has no unresolved violations with the board and has
7 a minimum of three years' experience within the last 15 years in the
8 field of landscape irrigation. Field experience acquired after
9 January 1, 1997 must comply with the requirements of P.L.1991,
10 c.27 (C.45:5AA-1 et seq.).

11 (cf: P.L.1991, c.27, s.4)

12

13 4. Section 5 of P.L.1991, c.27 (C.45:5AA-5) is amended to
14 read as follows:

15 5. a. There is established in the Department of Environmental
16 Protection the Landscape Irrigation Contractors Examining Board,
17 which shall consist of ~~six~~ seven members, as follows: ~~one of~~
18 ~~whom shall be~~ the Commissioner of Environmental Protection, or
19 the commissioner's designated representative, who shall serve ex
20 officio ~~[,]~~; ~~four~~ five public members ~~of whom~~ who shall be
21 landscape irrigation contractors and residents of the State ~~[,]~~; and
22 one ~~of whom~~ public member who shall be a licensed professional
23 engineer or certified landscape architect ~~[,]~~. Each of the public
24 members shall be appointed by the Governor with the advice and
25 consent of the Senate, for terms of three years. ~~Of the public~~
26 ~~members first appointed by the Governor, who shall not be required~~
27 ~~to be certified pursuant to section 7 of this act, two shall be~~
28 ~~appointed for terms of three years, two shall be appointed for a term~~
29 ~~of two years, and one shall be appointed for a term of one year.~~
30 Each of these members shall hold office for the term of the
31 appointment and until a successor is appointed and qualified. ~~A~~
32 ~~member is eligible for reappointment to one additional term.~~ Any
33 vacancy in the membership occurring other than by expiration of a
34 term shall be filled in the same manner as the original appointment,
35 but for the ~~expired~~ unexpired term only subject to subsection f. of
36 this section. chairman

37 b. The members of the board shall elect from among their
38 number a ~~chairman~~ chairperson, who shall schedule, convene,
39 and chair board meetings, and a ~~vice-chairman~~ vice-chairperson
40 who shall act as ~~chairman~~ chair in the ~~chairman's~~
41 chairperson's absence.

42 c. The powers of the board are vested in the members thereof
43 in office, and a majority of the total authorized membership of the
44 board is required to exercise its powers at any meeting thereof.

45 d. The members of the board shall serve without compensation,
46 but the board may, within the limits of funds appropriated or
47 otherwise made available to it, reimburse members for actual

1 expenses necessarily incurred in the discharge of their official
2 duties.

3 e. The board shall meet twice annually, and at such other times
4 as may be necessary, at a place provided by the department.

5 f. In the event of a public member's resignation or death, the
6 chairperson shall nominate, and a majority of the board shall
7 approve, a replacement board member to fill an unexpired term for
8 a period not to exceed one year or until the Governor appoints a
9 replacement member. If at the end of a one-year period the
10 Governor has not appointed a replacement board member, the
11 chairperson, with the approval of a majority of the board, may
12 appoint the same or another temporary board member. The
13 chairperson may nominate and a majority of the board shall approve
14 temporary members until such time as the Governor appoints a
15 replacement.

16 (cf: P.L.1991, c.27, s.5)

17

18 5. Section 6 of P.L.1991, c.27 (C.45:5AA-6) is amended to
19 read as follows:

20 6. The board shall:

21 a. Review the qualifications of an applicant for certification as
22 a landscape irrigation contractor;

23 b. Insure the proper conduct and standards of examinations for
24 the certification of landscape irrigation contractors;

25 c. Issue and renew certificates pursuant to this act, as
26 appropriate;

27 d. Refuse to issue or renew or shall suspend or revoke a
28 certificate issued under this act pursuant to section 8 of this act;

29 e. Maintain a registry of landscape irrigation contractor
30 certificates which shall record the name and address of the
31 contractor, the date the certificate was issued, and the number of the
32 certificate;

33 f. Require continuing education for certified landscape irrigation
34 contractors as provided in section 10 of P.L. , c. (C.) (pending
35 before the Legislature as this bill);

36 g. Review applications for a business permit;

37 h. Issue a business permit to a company engaged in the
38 business of landscape irrigation contracting and define any
39 restrictions or requirements regarding the use of that permit;

40 i. Allow a company to continue to engage in landscape irrigation
41 contracting for a period of up to 180 calendar days after the death,
42 disability or cessation of employment of the responsible certificate
43 holder within the company when the board is notified within 30
44 days of such an occurrence;

45 j. Refuse to issue or renew a business permit or suspend or
46 revoke a business permit in accordance with section 8 of P.L.1991,
47 c.27 (C.45:5AA-8);

48 k. Establish procedures for the registry of a business permit for

1 each company engaged in the business of landscape irrigation
2 contracting;

3 l. Maintain a registry of landscape irrigation contracting
4 businesses which shall include the company name, trade name,
5 business permit number, federal and State tax identification
6 numbers, landscape irrigation contractor's certificate name and
7 certification number, street address and mailing address of the
8 company, phone number of the company, and other information the
9 board deems necessary;

10 m. Adopt, pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to carry
12 out the provisions of this act; and

13 **[g.]** n. Adopt, pursuant to the "Administrative Procedure Act,"
14 fees for examinations, **[application]** applications and **[renewal]**
15 renewals of **[a certificate]** certificates or business permits, and
16 administrative costs associated with verifying continuing education
17 requirements. These fees shall be prescribed or changed to the
18 extent necessary to defray the expenses incurred by the board in the
19 performance of its duties but shall not be fixed at a level that will
20 raise amounts in excess of the amount estimated to be so required.
21 (cf: P.L.1991, c.27, s.6)

22
23 6. Section 7 of P.L.1991, c.27 (C.45:5AA-7) is amended to
24 read as follows:

25 7. a. The board shall develop an examination to evaluate the
26 knowledge, ability, and fitness of applicants to perform as
27 landscape irrigation contractors and for the certification thereof and
28 shall administer these examinations at least semi-annually at times
29 and places to be determined by the board. The board shall provide
30 adequate written notice of the time and place of the examination.
31 An applicant who fails an examination may not retake the
32 examination sooner than six months after the initial examination.
33 The board shall issue a certificate to an applicant who successfully
34 passes the examination and otherwise meets the standards and
35 qualifications established by the board.

36 b. Each initial certificate issued pursuant to this act shall expire
37 on January 31 of the second calendar year following issuance. All
38 certificates issued thereafter shall remain valid for a period of two
39 years and shall expire on January 31 of the second calendar year. A
40 new certificate issued any time after the regular January 31 date of
41 issuance shall remain valid until the regular January 31 date of
42 expiration.

43 c. A person may seek renewal of a certificate upon submission
44 of a renewal application **[and]**, proof of having obtained any
45 required continuing education credits and payment of the renewal
46 fee established by the board.

47 d. If a renewal application and fee are not received by the
48 board, the certificate shall expire, except that a person may renew a

1 certificate within two years of its expiration upon payment of [a
2 prorated] an appropriate fee to be set by the board. A new
3 certificate, issued pursuant to the provisions of this act, shall be
4 required of a person who fails to renew a certificate within two
5 years of its expiration.

6 e. Each application for a business permit or its renewal shall be
7 accompanied by proof of liability and workman's compensation
8 insurance and the appropriate fee. A business shall notify the board
9 of any insurance changes.

10 f. The board may, upon payment of appropriate fees, grant
11 landscape irrigation contractors certificates without examination or
12 upon partial examination to applicants licensed or certified by other
13 states; provided that New Jersey landscape irrigation contractors are
14 granted reciprocity by those states and those states' standards are
15 equal or comparable to those of New Jersey.

16 (cf: P.L.1991, c.27, s.7)

17

18 7. Section 8 of P.L.1991, c.27 (C.45:5AA-8) is amended to
19 read as follows:

20 8. a. The board may refuse to admit a person to an examination
21 or may refuse to issue or renew or may suspend or revoke any
22 certificate or business permit issued by the board pursuant to this
23 act upon proof that the applicant or holder of the certificate:

24 [a.] (1) Has obtained a certificate or authorization to sit for an
25 examination, as the case may be, through fraud, deception, or
26 misrepresentation;

27 [b.] (2) Has engaged in the use or employment of dishonesty,
28 fraud, deception, misrepresentation, false promise or false pretense;

29 [c.] (3) Has engaged in gross negligence or gross
30 incompetence;

31 [d.] (4) Has engaged in repeated acts of negligence or
32 incompetence;

33 [e.] (5) Has engaged in occupational misconduct as may be
34 determined by the board;

35 [f.] (6) Has been convicted of any crime involving moral
36 turpitude or any crime relating adversely to the activity regulated by
37 the board. For the purpose of this [subsection] paragraph a plea of
38 guilty, non vult, nolo contendere or any other similar disposition of
39 alleged criminal activity shall be deemed a conviction;

40 [g.] (7) Has had his authority to engage in the activity
41 regulated by the board revoked or suspended by any other state,
42 agency or authority for reasons consistent with this section;

43 [h.] (8) Has violated or failed to comply with the provisions of
44 this act; [or]

45 [i.] (9) Is incapable, for medical or any other good cause, of
46 discharging the functions of a certificate holder in a manner
47 consistent with the public's health, safety and welfare; or

1 (10) Has failed to comply with the continuing education
2 requirements as provided in section 10 of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4 b. The board shall afford a landscape irrigation contractor or
5 company holding a business permit an opportunity for hearing
6 before a certificate or business permit is revoked. The board shall
7 afford a landscape irrigation contractor or business holding a
8 business permit an opportunity for hearing after issuing an order to
9 suspend a certificate or business permit, issued pursuant to section
10 10 of P.L.1991, c.27 (C.45:5AA-10).

11 (cf: P.L.1991, c.27, s.8)

12

13 8. Section 9 of P.L.1991, c.27 (C.45:5AA-9) is amended to
14 read as follows:

15 9. **【Any person violating any provision of this act shall be**
16 **liable to a civil penalty of not more than \$2,500 for the first offense**
17 **and not more than \$5,000 for the second and each subsequent**
18 **offense. In lieu of an administrative proceeding, the board may**
19 **bring an action for the collection or enforcement of civil penalties**
20 **for the violation of any provision of this act. The action may be**
21 **brought in summary manner pursuant to "the penalty enforcement**
22 **law," N.J.S.2A:58-1 et seq.】**

23 a. If any landscape irrigation contractor or company violates any
24 provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.), or any code,
25 rule, regulation, or order adopted or issued pursuant thereto, the
26 board may institute a civil action in a court of competent
27 jurisdiction for injunctive or any other appropriate relief to prohibit
28 and prevent a violation or violations and the court may proceed in
29 the action in a summary manner.

30 b. Any landscape irrigation contractor or company who violates
31 the provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.) or any code,
32 rule, regulation or order adopted or issued pursuant thereto, may be
33 liable for a civil penalty of not more than \$2,500 for the first
34 offense and not more than \$5,000 for the second and each
35 subsequent offense. If the violation is of a continuing nature, each
36 day during which it continues shall constitute an additional,
37 separate, and distinct offense. No civil administrative penalty shall
38 be levied except upon an administrative order issued pursuant to
39 section 10 of P.L.1991, c.27 (C.45:5AA-10).

40 c. The board is authorized and empowered to compromise and
41 settle any claim for a penalty in such amount in the discretion of the
42 board as is appropriate and equitable under all circumstances.

43 d. Any landscape irrigation contractor or company that violates
44 a provision of P.L.1991, c.27 (C.45:5AA-1 et seq.) or any code,
45 rule, regulation, or order adopted or issued pursuant thereto, or a
46 court order issued pursuant to subsection a. of this section, or who
47 fails to pay a civil administrative penalty in full pursuant to
48 subsection b. of this section, is subject, upon order of the court, to a

1 civil penalty of not more than \$2,500 for the first offense and not
2 more than \$5,000 for the second and each subsequent offense.

3 e. If the violation is of a continuing nature, each day during
4 which the violation continues, or each day in which the civil
5 administrative penalty is not paid in full, constitutes an additional,
6 separate and distinct offense. Any penalty imposed under this
7 section may be recovered with costs in a summary proceeding
8 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
9 c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal
10 court shall have jurisdiction to enforce the "Penalty Enforcement
11 Law of 1999" in connection with P.L.1991, c.27 (C.45:5AA-1 et
12 seq.).

13 (cf: P.L.1991, c.27, s.9)

14

15 9. Section 10 of P.L.1991, c.27 (C.45:5AA-10) is amended to
16 read as follows:

17 10. **【Whenever it shall appear to the board that a violation of**
18 **this act, including engaging in landscape irrigation contracting**
19 **without a certificate, has occurred, is occurring or will occur, the**
20 **board may seek and obtain in a summary proceeding in the Superior**
21 **Court an injunction prohibiting the act or practice. In this**
22 **proceeding the court may assess a civil penalty in accordance with**
23 **the provisions of this act and may enter those orders necessary to**
24 **prevent the performance of an unlawful practice in the future.】**

25 a. Should the board have cause to believe that any landscape
26 irrigation contractor or company is in violation of any provision of
27 P.L.1991, c.27 (C.45:5AA-1 et seq.) or rules and regulations
28 promulgated pursuant thereto, the board may initiate an
29 investigation. If upon investigation the board determines that there
30 has been a violation of the provisions of P.L.1991, c.27 (C.45:5AA-
31 1 et seq.), the board shall be authorized to:

32 (1) issue a letter of warning, reprimand, or censure with regard
33 to any act, conduct, or practice which in the judgment of the board
34 upon consideration of all relevant facts and circumstances does not
35 warrant an initiation of formal action; or

36 (2) order that any landscape irrigation contractor or company
37 violating any provision of P.L.1991, c.27 (C.45:5AA-1 et seq.) to
38 cease or desist from future violations or to take such affirmative
39 corrective action as may be necessary with regard to any act or
40 practice found unlawful by the board; or

41 (3) order any landscape irrigation contractor or company found
42 to have violated any provision of P.L.1991, c.27 (C.45:5AA-1 et
43 seq.) to restore any person for whom landscape irrigation
44 contracting work was done to his position prior to performance of
45 the work; or

46 (4) assess a civil administrative penalty in accordance with
47 section 9 of P.L.1991, c.27 (C.45:5AA-9); or

1 (5) revoke or suspend a certificate or business permit pursuant
2 to section 8 of P.L.1991, c.27 (C.45:5AA-8).

3 b. Any landscape irrigation contractor or company to which an
4 order or assessment of civil administrative penalty or a notice of
5 revocation of a certificate or business permit is issued has 20 days
6 from the receipt of the order to deliver to the board a written request
7 for a hearing. Upon receipt of that request, the board shall
8 determine whether to conduct the hearing itself or refer the matter
9 to the Office of Administrative Law, which shall assign an
10 Administrative Law Judge to conduct a hearing in the form of a
11 contested case pursuant to the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.). If the matter is referred to the
13 Office of Administrative Law, the board shall affirm, reject, or
14 modify the decision within 45 days of receipt of the Administrative
15 Law Judge's initial decision by issuing its own final decision. The
16 board's action shall be considered the final agency action for the
17 purposes of the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.), and shall be subject only to judicial review as
19 provided in the Rules of Court.

20 c. If no hearing is requested, an order becomes a final order
21 upon the expiration of the 20-day period. This final order shall be
22 considered the final agency action for the purposes of the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.), and shall be subject only to judicial review as provided in the
25 Rules of Court. Payment of an administrative penalty is due when a
26 final order is issued or when the order becomes a final order.
27 Pending the determination by the board and upon application by a
28 landscape irrigation contractor or business to whom an order or
29 notice of revocation is issued, the board may stay operation of an
30 order upon such terms and conditions as it deems proper.

31 (cf: P.L.1991, c.27, s.10)

32
33 10. (New section) a. The board shall establish standards for
34 continuing education for landscape irrigation contractors as a
35 condition of certification renewal for certificates issued under its
36 jurisdiction. The standards shall concern the subject matter and the
37 number and type of continuing education credits to be required.

38 b. The board shall approve education programs relevant to
39 landscape irrigation and water conservation and designate by
40 regulation the number of credits to be given for continuing
41 education.

42 c. The board shall approve other equivalent educational
43 programs including, but not limited to, programs provided by
44 educational institutions, irrigation associations and other relevant
45 professional and technical associations, as well as relevant trade
46 groups and shall establish procedures for the issuance of credit upon
47 the satisfactory completion of these programs.

48 d. The board shall waive continuing education requirements

1 under this section on an individual basis for reasons of certified
2 illness, undue hardship, disability, retirement, or other good cause.

3

4 11. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill permits the Landscape Irrigation Contractors Examining
10 Board in the Department of Environmental Protection to issue
11 business permits to companies to engage in the business of
12 landscape irrigation contracting. The bill also stipulates that no
13 company is permitted to advertise, enter into or engage in the
14 business of landscape irrigation contracting unless the company has
15 first secured a business permit from the board and employs at least
16 one certified landscape irrigation contractor.

17 The bill exempts landscape contractors performing incidental
18 repairs to sprinkler system piping damaged as a result of landscape
19 maintenance or construction from the requirement of obtaining a
20 certificate.

21 This bill also increases the membership of the Landscape
22 Irrigation Contractors Examining Board to include five, rather than
23 four, landscape irrigation contractors on the board. In addition, the
24 bill provides that either a licensed professional engineer or certified
25 landscape architect be appointed to the board.

26 Also, the bill outlines procedures for the issuance and renewal of
27 business permits; provides for the tracking of landscape irrigation
28 contracting businesses; and establishes standards for reciprocity
29 with other states.

30 Furthermore, this bill stipulates that the Landscape Irrigation
31 Contractors Examining Board shall establish standards for
32 continuing education for landscape irrigation contractors as a
33 condition of certification renewal and to approve education
34 programs relevant to landscape irrigation and water conservation.

35 The bill also clarifies the Landscape Irrigation Contractors
36 Examining Board's authority to afford a landscape irrigation
37 contractor or business a hearing upon notice of revocation or order
38 of suspension and expands the board's authority to assess civil
39 administrative penalties.