SENATE DOCKET, NO. FILED ON: 1/12/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Mr. Brewer**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the registration of irrigation contractors.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Mr. Brewer | Worcester, Hampden, Hampshire and Franklin |

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to the registration of irrigation contractors.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The General Laws, as appearing in the 2006 Official Edition, is hereby amended after Chapter 142A, by adding at the following new chapter:-

CHAPTER 142B: REGULATION OF IRRIGATION CONTRACTORS AND IRRIGATION CONTRACTING BUSINESSES

**Section 1. Definitions**

The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

 “Administrator”, the chief administrator of the board of building regulations and standards, an agency within the executive office of public safety, established by section 18 of chapter 6A.

 “Board”, the Board of Building Registration and Standards.

 “Business permit”, a business that holds a permit as approved by the board entitling it to be called by the title “irrigation contracting business” and which employs at least one irrigation contractor, certified under the provisions of this act.

 “Certified irrigation contractor”, an individual who meets all the requirements of the EPA WaterSense program and is certified as such in good standing with the irrigation association.

 “Certified irrigation designer”, an individual who meets all the requirements of the EPA WaterSense program and is certified as such in good standing with the irrigation association.

 “Certified landscape irrigation auditor”, an individual who meets all the requirements of the EPA WaterSense program and is certified as such in good standing with the irrigation association.

 “Division”, the Massachusetts Division of Insurance.

 “Irrigation association”, the worldwide professional trade organization that establishes and maintains industry standards and guidelines for certification, education and professional development and promotes modern water management skills and techniques for irrigated agriculture, turf, landscape and golf.

 “Irrigation contracting”, the construction, installation, repair, maintenance, improvement, winterization and alteration of any portion of an irrigation system.

 “Irrigation contractor”, a person who holds a certificate entitling him to be called by the title “irrigation contractor” in the commonwealth under the authority of section two hundred and twenty seven.

 “Irrigation system”, any assemblage of components, materials or special equipment which is constructed and installed underground or on the surface for controlled dispersion of water from any safe and suitable source, for the purpose of irrigating landscape vegetation or the control of dust and erosion on landscaped areas, including integral pumping systems and including required wiring within that system and connection to a public or private water supply system under the terms and conditions of a contract. An irrigation system, when connected to a potable water supply, shall include a connection beginning at the downstream side of a properly installed backflow prevention device as required under 248 CMR 10.00. An irrigation system shall not include plumbing or a plumbing system as defined in Chapter 142 of the General Laws.

 “Professional irrigation consultant”, an independent irrigation designer responsible for the preparation of irrigations system plans and specifications, the observation of system construction and recommendations for irrigation management and who derives more than eighty percent of their income from professional consulting.

 **Section 2. Registration of contractors**

 (a) No person shall construct, install, repair, maintain, winterize or alter any portion of an irrigation system in the commonwealth nor shall they represent themselves to be an irrigation contractor or use the title irrigation contractor in the commonwealth on any advertisement, sign, title, card or other device to indicate that such person is a irrigation contractor, unless registered with the approval of the board of building regulations and standards. A person may construct, install, repair, maintain, winterize or alter any portion of an irrigation system in the commonwealth if under the direct supervision of a certified irrigation contractor. Every holder of a certificate of such registration shall display it in a conspicuous place in his principal office or place of employment, and on any specifications or plans specifically used in the development, management and installation of an irrigation system and on all advertisements, signs, tiles, cards and must display their registration number on any vehicles used for such commercial purposes.

 (b) It shall be the duty of the administrator to issue and deliver a certificate of registration to all applicants who have been approved for registration.

**Section 3. Registration applications; required information**

In order to be registered as an irrigation contractor, an applicant shall make written application under oath to the administrator on a form provided by him. Said application shall include but may not be limited to verification that that they are at least eighteen years of age; are a citizen of the United States or have legally declared their intention of so becoming; are duly certified in good standing as a certified irrigation contractor or certified irrigation designer by an approved and independent third party; and, whether the applicant has ever been previously registered in the commonwealth as an irrigation contractor pursuant to this chapter, under what other names he was previously registered, whether there have been previous judgments or arbitration awards against him, whether there is money owing to the fund on account of such judgments or awards against him, and whether his registration has ever been suspended or revoked. Every applicant for registration as an irrigation contractor shall be required, in addition to all other requirements, to establish, by written examination, his competency to plan, construct, manage, install and supervise the installation of irrigation systems. Each written examination may be supplemented by such oral examinations as the board shall determine.

**Section 4. Continuing education**

The board shall establish continuing education standards and requirements for the renewal of an irrigation contractor certificate, including the subject matter, type and number of credits required for each renewal. The board shall approve qualifying, continuing education programs including but not limited to programs provided by accredited educational institutions or relevant professional and technical associations. The board may waive continuing education requirements required under this act on an individual basis for reasons of illness, undue hardship, disability, retirement or other cause it deems appropriate.

 **Section 5. Exemptions**

The following shall not be required to be registered as an irrigation contractor pursuant to this chapter:

 (a) An employee working under the direct supervision of a certified irrigation contractor;

 (b) A homeowner who installs an irrigation system at his or her place of residence;

 (c) Anyone in the employ of a golf course for the purpose of maintaining or repairing an existing irrigation system; and

 (d) Anyone installing an irrigation system to irrigate field crops, grain, soy beans, hay, fruits, vegetables, Christmas trees, horticultural specialties to be offered for sale, including nursery stock, ornamental shrubs, ornamental trees, flowers, and turf on turf farms;

 (e) Vendors of irrigation contracting components, materials, or equipment who perform only such functions as delivery, rendering of advice or assistance in the installation or normal warranty service or exchange of defective or damaged goods;

 (f) Duly certified and in good standing landscape architectural firms, professional engineering firms and irrigation consulting firms providing only design and oversight services of irrigation system projects on a full time basis.

**Section 6. Business permits; necessity; display**

 No firm, partnership or corporation shall represent themselves as an irrigation contracting business or use the title irrigation contracting business in the commonwealth on any advertisement, sign, title, card or other device to indicate that such person is an irrigation contracting business, unless such firm, partnership or corporation shall have secured from the board a business permit as an irrigation contracting business **or is acting under the direct supervision of a certified irrigation contractor**. Every holder of a business permit shall display it in a conspicuous place in its principal office. Nothing herein shall be construed to prevent a firm, partnership or corporation from using the title “irrigation contractor” or “irrigation contractors”, or similar title provided that the practice of irrigation contracting by such firm, partnership or corporation shall be under the professional and supervisory control of a person registered as a irrigation contractor and the entity holds a valid business permit.

**Section 7. Qualifications for business permits**

In order to register for an original business permit or renewal of a business permit, applicants are required to provide proof of liability and workers compensation policies, surety bond, irrevocable letter of credit and that at least one certified irrigation contractor is employed by the applicant. Said proof of insurance shall be completed on a form provided or approved by the Board and shall be issued in the name of the business permit holder. The board shall be listed as a certificate holder and notified in any lapses of coverage.

**Section 8. Certificate of registration and business permit fees**

Applicants for certificates of registration and for business permits shall pay a fee, to be established bi-annually by the secretary for administration and finance pursuant to section three B of chapter seven and shall be paid to the board on or before the thirty-first day of January of every other year. Each initial certificate of registration issued in accordance with this act shall expire on January 31 of the second calendar year following issuance. All certificates of registration issued thereafter shall remain valid for a period of two years and shall expire January 31of the second calendar year. A new permit issued anytime after the January 31 issuance date shall remain valid until the regular January 31 date of expiration.

 The board may asses a penalty to be added to the amount of the certificate for delinquent payments.

 Failure to renew certificate of registration within sixty days after notification by the board that said certificate has expired, shall require such applicant to register anew and may require re-examination, subject to the discretion of the board.

 Fees for duplicate certificates shall also be established bi-annually by the secretary for administration and finance and shall be collected at the time of the request for such documents.

Fees for business permits shall be determined bi-annually by the secretary for administration and finance pursuant to section three B of chapter seven and shall be paid to the board. Each initial business permit issued in accordance with this act shall expire on January 31 of the second calendar year following issuance. All permits issued thereafter shall remain valid for a period of two years and shall expire January 31of the second calendar year. A new permit issued anytime after the January 31 issuance date shall remain valid until the regular January 31 date of expiration.

 **Section 9. Suspension, revocation or refusal of certificates and business permits; re-issuance**

The board may refuse to issue, renew, suspend or revoke the certificate of registration or business permit upon proof satisfactory to the board:

 (a) that the holder of such certificate of registration or business permit is in violation of any provision of sections two hundred and twenty-seven to two hundred and thirty-five, inclusive, or of any rule or regulation promulgated by the board;

 (b) that such certificate of registration or business permit was obtained by fraud or misrepresentation;

 (c) that any money or thing of value, except fees prescribed or authorized by said sections, was paid or received to secure the issuance of such certificate of registration or business permit;

 (d) that the holder of such certificate of registration or business permit has been guilty of a felony;

 (e) that the holder of such certificate of registration or business permit has been guilty of fraud or deceit, or of gross negligence, incompetence or misconduct, in the use of the title of irrigation contractor; or

 (f) that the holder of such certificate of registration or business permit has permitted or suffered his certificate to be affixed to any system plans or specifications that were not prepared by him or under his personal supervision by his regularly employed subordinates.

The board may reissue a certificate of registration or business permit to any person whose certificate of registration or business permit has been revoked. Application for the re-issuance of a certificate of registration or business permit shall be made in such manner as the board may direct.

**Section 10. Powers and Duties of the Board of Board of Building Regulations and Standards**

The board shall review applications for certification, develop and conduct the proper examinations for certification, register and issue certificates of registration, take appropriate disciplinary action, including but not limited to the assessment of penalties or the suspension or revocation of said certification, require continuing education requirements, and maintain a current roster of irrigation contractors in the commonwealth.

The board shall review applications for business permits, issue business permits to firms, partnerships or corporations engaged in the business of irrigation contracting and define any restrictions or requirements regarding the use of such permit.

The board shall take appropriate disciplinary action, including but not limited to the assessment of penalties or the suspension or revocation of said business permit, and maintain a current roster of permitted irrigation contracting businesses in the commonwealth.

The board may adopt, amend and rescind such rules and regulations, not inconsistent with other provisions of the General Laws, as it deems necessary to carry out the provisions of this chapter.

**Section 11. Unlawful conduct; penalties**

It shall be unlawful for any person to:

 (a) hold himself as an irrigation contractor unless he is registered under the provisions of sections two hundred and twenty-seven to two hundred and thirty-five, inclusive;

 (b) present as his own the certificate of registration of another;

 (c) give false or forged evidence to the board of registration or any member thereof in obtaining a certificate;

 (d) falsely impersonate any other registrant of like or different name;

 (e) use or attempt to use a certificate of registration that has been revoked; or

 (f) otherwise violate any of the provisions of said sections.

 A fine of not less than fifteen hundred dollars nor more than twenty five hundred dollars, or by imprisonment for not more than one year, or both shall be set for a first offense. A fine of not less than twenty five hundred dollars nor more than five thousand dollars, or by imprisonment for not more than two year, or both shall be set for each and every subsequent offense. Violations shall be considered unfair and deceptive acts and subject to the provisions of Chapter 93A of the General Laws.

SECTION 2. Chapter 143 of the General Laws is hereby amended by inserting after section 61 the following section:-
            Section 61A. Notwithstanding any general or special law, rule or regulation to the contrary, the state board of building regulations and standards shall amend the state building code to include system interruption devices for newly installed or renovated outdoor landscape irrigation systems. The board shall adopt rules and regulations for the installation of the system interruption devices to override and suspend the programmed operation of the irrigation system during periods of sufficient moisture and shall specify the criteria that devices must meet to be accepted under this section.  These regulations shall be in accordance with generally accepted standards of irrigation practice and shall also include a requirement that all such new irrigation systems be inspected every 3 years by a certified irrigation contractor (CIC), a certified landscape irrigation auditor (CLIA), or a certified irrigation designer (CID).  This section shall not apply to systems operating on golf courses or agricultural lands.

SECTION 3. Section 93 of Chapter 143 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended in the third sentence of the first paragraph by striking the word “eleven” and replacing it with the word:- thirteen

Section 93 of Chapter 143 of the General Laws, as so appearing, is hereby further amended third sentence of the first paragraph by adding, after the words “local fire department”, the following:- one of whom shall be a certified irrigation contractor, one of whom shall be a certified irrigation designer,

SECTION 4. Section 94 of Chapter 143 of the General Laws, as appearing in the 2006 Official Edition is hereby amended in paragraph (a) by adding after the words “installation of equipment,” the following new words:- installation, maintenance and repair of irrigation systems

Section 94 of Chapter 143 of the General Laws, as so appearing, is hereby further amended in paragraph (a) by adding after the word “energy,” the following new words:- and water

Section 94 of Chapter 143 of the General Laws, as so appearing, is hereby further amended in paragraph (c) by adding after the word “energy,” the following new words:- and water

SECTION 5. Section 95 of Chapter 143 of the General Laws, as so appearing, is hereby amended in paragraph (a) by adding after the word “energy,” the following new words:- and water