

Landscape Contractor Licensing Law

GENERAL ASSEMBLY OF NORTH CAROLINA, SESSION 2013

SESSION LAW 2014-103, HOUSE BILL 366

REWRITE THE LANDSCAPE CONTRACTOR LICENSING STATUTES

SECTION 3.(a) G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 3.(b) Chapter 89D of the General Statutes 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 Contractors' Licensing Board.
- (2) Landscape construction or contracting.—The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.
- (3) 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 prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.
 - b. Practices the act of horticulture consultation or planting design for employment purposes.
 - c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
 - d. Designs, installs, or maintains low-voltage landscape lighting systems, provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7) and (ii) the low-voltage lighting systems do not exceed 50 volts and constitute a Class II or Class III cord and plug connected power system.
 - e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.
- (4) Person.—An individual, firm, partnership, association, corporation, or other legal entity.

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

- (a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation "landscape contractor," or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under

an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.

- (b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:
 - (1) The practice of landscape architecture, as defined in G.S. 89A-1.
 - (2) The practice of engineering, as defined in G.S. 89C-3.
 - (3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.
 - (4) The practice of irrigation contracting, as defined in G.S. 89G-1.
 - (5) The practice of architecture, as defined in G.S. 83A-1.
 - (6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler, or fuel piping contracting, as defined in G.S. 87-21, provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of a potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.
 - (7) The practice of electrical contracting, as defined in G.S. 87-43.
- (c) A landscape contractor licensed under this Chapter is not required to be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes if the licensed landscape contractor is performing landscape construction or contracting work valued at an amount greater than thirty thousand dollars (\$30,000).
- (d) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend "N.C. Licensed Landscape Contractor." A landscape contractor may use the seal only while the license is valid.
- (e) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"§ 89D-13. Exemptions. The provisions of this Chapter shall not apply to the following:

- (1) Any federal, State, or local governmental agency performing landscaping on public property.
- (2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.
- (3) Any property owner performing landscape work on his or her own property.
- (4) Any person or business owning or operating a golf course.
- (5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than thirty thousand dollars (\$30,000). A local governmental unit shall not enact a local ordinance or regulation requiring licensure for landscaping work performed pursuant to this subdivision.

- (6) A general contractor licensed under Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor.
- (7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.
- (8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.
- (9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.
- (10) A professional landscape architect licensed under Chapter 89A of the General Statutes.
- (11) An individual or a business engaged in any of the following activities while performing that activity:
 - a. Clearing and grading plots and areas of land.
 - b. Erosion control.
 - c. Arboriculture, including consultations on pruning and removal of trees.
 - d. The installation of sod, seed, or plugs by sod producers certified by the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.
 - e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.
 - f. Lawn mowing, turf edging, and debris removal services.
 - g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.
 - h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.
- (12) Any person performing landscaping work on a farm for use in agriculture production, farming, or ranching.

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

- (a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:
 - (1) One member appointed by the Governor who is a member of the general public.
 - (2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.
 - (3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Industry Division.
 - (4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives

pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.

- (5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.
- (6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.
- (b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.
- (c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.
- (d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.
- (e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.
- (f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"§ 89D-15. Powers and duties. The Board shall have the following powers and duties:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
- (4) Issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) Reprimand or otherwise discipline licensees under this Chapter.
- (6) Receive and investigate complaints from members of the public.
- (7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
- (8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.
- (10) Collect fees required by G.S. 89D-21 and any other moneys permitted by law to be paid to the Board.
- (11) Require licensees to file and maintain an adequate surety bond.

- (12) Establish and approve continuing education requirements for persons licensed under this Chapter.
- (13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
- (14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.
- (16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.
- (17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

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

- (a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:
 - (1) Is at least 18 years of age.
 - (2) Is of good moral character as determined by the Board.
 - (3) Provides evidence of business identification as required by the Board.
 - (4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars (\$10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.
- (b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.
- (c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"§ 89D-17. Corporations; partnerships; persons doing business under trade name.

- (a) The Board may issue a license in the name of a corporation if the corporation complies with the following:
 - (1) One or more officers or full-time employees, or both, empowered to act for the corporation are individuals licensed under this Chapter.
 - (2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of a corporation and are readily available to exercise supervision over the work performed pursuant to the contract.

- (b) The Board may issue a license in the name of a limited liability company if the company complies with the following:
 - (1) One or more managers, as defined in G.S. 57D-1-03, executives, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.
 - (2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and are readily available to exercise supervision over the work performed pursuant to the contract.
- (c) The Board may issue a license in the name of a partnership if the partnership complies with the following:
 - (1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.
 - (2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and are readily available to exercise supervision over the work performed pursuant to the contract.
- (d) The Board may issue a license in an assumed or designated trade name if the owner of the business complies with the following:
 - (1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.
 - (2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and are readily available to exercise supervision over the work performed pursuant to the contract.
- (e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.
- (f) A person licensed pursuant to this section shall be readily available to exercise supervision over a contract for landscape construction or contracting until the contract is completed.
- (g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.
- (h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (1) of subsection (a), subdivision (1) of subsection (b), or subdivision (1) of subsection (c) of this section, the corporation, partnership, or person shall have 120 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (1) of subsection (a), subdivision (1) of subsection (b), or subdivision (1) of subsection (c) of this section. The Board may, in its discretion, grant the corporation, partnership, or person a period greater than 120 days to satisfy the requirements described in subdivision (1) of subsection (a), subdivision (1) of subsection (b), or subdivision (1) of subsection (c) of this section as it deems appropriate. After 120 days, or a time period greater than 120 days as approved by the Board, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as

described in subdivision (1) of subsection (a), subdivision (1) of subsection (b), or subdivision (1) of subsection (c) of this section, the license issued under this section is automatically suspended and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"§ 89D-18. Licensing of nonresidents.

- (a) Definitions.—The following definitions apply in this section:
 - (1) Delinquent income tax debt.—The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
 - (2) Foreign corporation.—A corporation as defined in G.S. 55-1-40.
 - (3) Foreign entity.—A foreign corporation, a foreign limited liability company, or a foreign partnership.
 - (4) Foreign limited liability company.—A company as defined in G.S. 57D-1-03.
 - (5) Foreign partnership.—One of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (b) Licensing.—Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.
- (c) Certificate of Authority Required.—The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.
- (d) Information.—The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.
- (e) Delinquents.—If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual or foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"§ 89D-19. Reciprocity. The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"§ 89D-20. License renewal and continuing education.

- (a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape

construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

- (b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submission to the Board of proof of the continuing education units required by this subsection, and payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"§ 89D-21. Expenses and fees.

- (a) The Board may impose the following fees not to exceed the amounts listed below:
 - (1) Application fee \$100.00
 - (2) Examination fee 250.00
 - (3) Individual license fee and individual license renewal 100.00
 - (4) Initial corporate, limited liability company, partnership, or trade name license 100.00
 - (5) Corporate, limited liability company, partnership, or trade name license renewal 100.00
 - (6) Late renewal fee 50.00
 - (7) Reinstatement fee 250.00
 - (8) License by reciprocity 250.00
 - (9) Duplicate license 25.00
- (b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"§ 89D-22. Disciplinary action.

- (a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:
 - (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
 - (2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.
 - (3) Commits an act of gross malpractice or incompetence as determined by the Board.
 - (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.
 - (5) Has been declared incompetent by a court of competent jurisdiction.
 - (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
 - (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
 - (8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

- (b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter.

"§ 89D-23. Civil penalties.

- (a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:
 - (1) The nature, gravity, and persistence of the particular violation.
 - (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
 - (3) Whether the violation was willful and malicious.
 - (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"§ 89D-24. Injunction to prevent violation; notification of complaints.

- (a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.
- (b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.(c) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, G.S. 89D-14(a), as enacted by Section 3(b) of this act, are appointed.

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

SECTION 3.(e) Any person who, on or before December 31, 2014, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2015:

- (1) Is registered as a landscape contractor.
- (2) Is licensed as an irrigation contractor.
- (3) Is certified as a turf grass professional.
- (4) Has three years of documented experience in the person's own business as a landscape contractor or three years of documented experience as an employee in a landscape contracting business and

meets all other requirements and qualifications for licensure as a landscape contractor. Educational experience can be applied toward the three-year experience requirement as follows:

- a. One year of credit for a two-year degree in related educational training.
- b. Two years of credit for a four-year degree in related educational training.
- c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2015 calendar year to qualify for the landscape contractor's license, as enacted by Section 3(b) of this act.

SECTION 3.(f) This section becomes effective August 1, 2015.