

SENATE No. 107

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Brewer

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:

NAME:

Mr. Brewer

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire and Franklin

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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

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

5 Section 1. Definitions

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

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

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

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

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

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

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

24 “Division”, the Massachusetts Division of Insurance.

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

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

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

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

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

47 **Section 2. Registration of contractors**

48 (a) No person shall construct, install, repair, maintain, winterize or alter any portion of an
49 irrigation system in the commonwealth nor shall they represent themselves to be an irrigation
50 contractor or use the title irrigation contractor in the commonwealth on any advertisement, sign,
51 title, card or other device to indicate that such person is a irrigation contractor, unless registered
52 with the approval of the board of building regulations and standards. A person may construct,

53 install, repair, maintain, winterize or alter any portion of an irrigation system in the
54 commonwealth if under the direct supervision of a certified irrigation contractor. Every holder
55 of a certificate of such registration shall display it in a conspicuous place in his principal office
56 or place of employment, and on any specifications or plans specifically used in the development,
57 management and installation of an irrigation system and on all advertisements, signs, tiles, cards
58 and must display their registration number on any vehicles used for such commercial purposes.

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

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

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

74 manage, install and supervise the installation of irrigation systems. Each written examination
75 may be supplemented by such oral examinations as the board shall determine.

76 **Section 4. Continuing education**

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

84 **Section 5. Exemptions**

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

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

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

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

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

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

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

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

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

113 **Section 7. Qualifications for business permits**

114 In order to register for an original business permit or renewal of a business permit,
115 applicants are required to provide proof of liability and workers compensation policies, surety
116 bond, irrevocable letter of credit and that at least one certified irrigation contractor is employed

117 by the applicant. Said proof of insurance shall be completed on a form provided or approved by
118 the Board and shall be issued in the name of the business permit holder. The board shall be
119 listed as a certificate holder and notified in any lapses of coverage.

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

121 Applicants for certificates of registration and for business permits shall pay a fee, to be
122 established bi-annually by the secretary for administration and finance pursuant to section three
123 B of chapter seven and shall be paid to the board on or before the thirty-first day of January of
124 every other year. Each initial certificate of registration issued in accordance with this act shall
125 expire on January 31 of the second calendar year following issuance. All certificates of
126 registration issued thereafter shall remain valid for a period of two years and shall expire January
127 31 of the second calendar year. A new permit issued anytime after the January 31 issuance date
128 shall remain valid until the regular January 31 date of expiration.

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

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

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

136 Fees for business permits shall be determined bi-annually by the secretary for
137 administration and finance pursuant to section three B of chapter seven and shall be paid to the

138 board. Each initial business permit issued in accordance with this act shall expire on January 31
139 of the second calendar year following issuance. All permits issued thereafter shall remain valid
140 for a period of two years and shall expire January 31 of the second calendar year. A new permit
141 issued anytime after the January 31 issuance date shall remain valid until the regular January 31
142 date of expiration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183 **Section 11. Unlawful conduct; penalties**

184 It shall be unlawful for any person to:

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

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

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

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

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

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

193 A fine of not less than fifteen hundred dollars nor more than twenty five hundred dollars,
194 or by imprisonment for not more than one year, or both shall be set for a first offense. A fine of
195 not less than twenty five hundred dollars nor more than five thousand dollars, or by
196 imprisonment for not more than two year, or both shall be set for each and every subsequent

197 offense. Violations shall be considered unfair and deceptive acts and subject to the provisions of
198 Chapter 93A of the General Laws.

199 SECTION 2. Chapter 143 of the General Laws is hereby amended by inserting after section 61
200 the following section:-

201 Section 61A. Notwithstanding any general or special law, rule or regulation to the
202 contrary, the state board of building regulations and standards shall amend the state building
203 code to include system interruption devices for newly installed or renovated outdoor landscape
204 irrigation systems. The board shall adopt rules and regulations for the installation of the system
205 interruption devices to override and suspend the programmed operation of the irrigation system
206 during periods of sufficient moisture and shall specify the criteria that devices must meet to be
207 accepted under this section. These regulations shall be in accordance with generally accepted
208 standards of irrigation practice and shall also include a requirement that all such new irrigation
209 systems be inspected every 3 years by a certified irrigation contractor (CIC), a certified
210 landscape irrigation auditor (CLIA), or a certified irrigation designer (CID). This section shall
211 not apply to systems operating on golf courses or agricultural lands.

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

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

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

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

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

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