

CHAPTER 229

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

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

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

C.45:5AA-2 Definitions.

2. As used in this act:
 - a. "Board" means the Landscape Irrigation Contractors Examining Board established pursuant to section 5 of P.L.1991, c.27 (C.45:5AA-5).
 - b. "Department" means the Department of Environmental Protection.
 - c. "Landscape irrigation contracting" means the construction, repair, maintenance, improvement and alteration of any portion of a landscape irrigation system, including required wiring within that system and connection to the required power supply and the installation and connection to a public or private water supply system under the terms and conditions of a contract.
 - d. "Landscape irrigation contractor" means a natural person who is certified to do landscape irrigation contracting.
 - e. "Landscape irrigation contractor certificate" or "certificate" means the certificate issued by the board pursuant to the provisions of this act.
 - f. "Landscape irrigation system" means any assemblage of components, materials or special equipment which is designed, constructed and installed for controlled dispersion of water from any safe and suitable source, including properly treated wastewater, for the purpose of irrigating landscape vegetation or the control of dust and erosion on landscaped areas, including integral pumping systems or integral control systems for manual, semi-automatic or automatic control of the operation of these systems.
 - g. "Business permit" means the permit issued by the board to a person allowing the person to engage in the business of landscape irrigation contracting, pursuant to the provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.).
 - h. "Person" means any natural person, corporation, company, partnership, firm, association, and any owner or operator of a permittee.
 - i. "Permittee" means a person who has secured a business permit to engage in the business of landscape irrigation contracting, pursuant to the provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.).

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

C.45:5AA-3 Business permit, certification for landscape irrigation contractors.

3. a. No person shall advertise, enter into or engage in the business of landscape irrigation contracting unless the person has first secured a business permit from the board and such person or an officer, partner or employee who is or will be actively engaged in the business for which a business permit is sought has obtained a landscape irrigation contractor certificate from the board in accordance with the provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.), and such certified landscape irrigation contractor shall assume full responsibility for inspection and supervision of all landscape irrigation contracting work to be performed by the permittee. If a permittee or business permit applicant employs more than one certified landscape irrigation contractor, the permittee or business permit applicant shall designate

which certified landscape irrigation contractor shall assume full responsibility for inspection and supervision of all landscape irrigation contracting work to be performed by the permittee. Any single act or transaction, including the advertising of available services, shall constitute engaging in the business of landscape irrigation contracting. A certified landscape irrigation contractor shall not be entitled to qualify more than one person for a business permit.

b. Officers, employees, and duly authorized representatives of the United States, the State, or any political subdivision thereof performing work on the property of the public entity; vendors of landscape irrigation 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; contractors engaged in the design, fabrication, installation or construction of irrigation apparatus, or irrigation equipment of any type which is to be used solely for agricultural purposes in the production of harvestable and saleable vegetative or animal products; plumbing contractors as defined by section 2 of P.L.1968, c.362 (C.45:14C-2); and employees engaged in landscape irrigation contracting for a permittee which has at least one certified landscape irrigation contractor, are exempt from the requirement of a certificate imposed by this act.

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

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

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

e. Golf course employees performing work on landscape irrigation systems on the golf course where they are currently employed, are exempt from obtaining a certificate as provided in P.L.1991, c.27 (C.45:5AA-1 et seq.).

f. A business permit shall not be required in connection with landscape irrigation contracting performed by an employee of a community association for the community association's landscape irrigation system. For purposes of this subsection, "community association" means a condominium, homeowner, fee simple, cooperative or other community association.

g. Nothing in this act shall be construed to prevent individuals licensed or certified in this State under any other law from engaging in the profession for which they are licensed or certified.

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

C.45:5AA-4 Application for certification as landscape irrigation contractor.

4. A person seeking certification as a landscape irrigation contractor shall apply therefor on forms prescribed and provided by the board, and pay the application fee established by the board. In addition to any other information or documents that may be required by the board,

each applicant shall submit satisfactory evidence that the applicant is at least 18 years of age, has no unresolved violations with the board and has a minimum of three years' experience within the last 15 years in the field of landscape irrigation. Field experience acquired after January 1, 1997 must comply with the requirements of P.L.1991, c.27 (C.45:5AA-1 et seq.).

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

C.45:5AA-5 Landscape Irrigation Contractors Examining Board.

5. a. There is established in the Department of Environmental Protection the Landscape Irrigation Contractors Examining Board, which shall consist of seven members, as follows: the Commissioner of Environmental Protection, or the commissioner's designated representative, who shall serve ex officio; five public members who shall be landscape irrigation contractors and residents of the State; and one public member who shall be a licensed professional engineer or certified landscape architect. Each of the public members shall be appointed by the Governor with the advice and consent of the Senate, for terms of three years. Each of these members shall hold office for the term of the appointment and until a successor is appointed and qualified. Any vacancy in the membership occurring other than by expiration of a term shall be filled in the same manner as the original appointment, but for the unexpired term only.

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

c. The powers of the board are vested in the members thereof in office, and a majority of the total authorized membership of the board is required to exercise its powers at any meeting thereof; provided however, that if a board member has resigned or otherwise vacated his or her membership appointment before the expiration of his or her term, or if a board member does not serve after the expiration of his or her term pending the appointment of a successor, then, until such vacancies are filled, a majority of the currently serving membership of the board is required to exercise its powers at any meeting thereof.

d. The members of the board shall serve without compensation, but the board may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties.

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

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

C.45:5AA-6 Duties, powers of board.

6. The board shall:

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

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

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

d. Refuse to issue or renew or shall suspend or revoke a certificate issued under this act pursuant to section 8 of P.L.1991, c.27 (C.45:5AA-8);

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

the certificate;

f. Require continuing education for certified landscape irrigation contractors as provided in section 10 of P.L.2009, c.229 (C.45:5AA-7.1);

g. Review applications for a business permit;

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

i. Allow a person to continue to engage in landscape irrigation contracting for a period of up to 180 calendar days after the death, disability or cessation of employment of the responsible certificate holder who qualified the person for a business permit when the board is notified within 30 days of such an occurrence;

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

k. Establish procedures for the registry of a business permit for each person engaged in the business of landscape irrigation contracting;

l. Maintain a registry of landscape irrigation contracting business permits which shall include the permittee's name, trade name, business permit number, federal and State tax identification numbers, landscape irrigation contractor's certificate name and certification number, street address and mailing address of the permittee, phone number of the permittee, and other information the board deems necessary;

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

n. Adopt, pursuant to the "Administrative Procedure Act," fees for examinations, applications and renewals of certificates or business permits, and administrative costs associated with verifying continuing education requirements. These fees shall be prescribed or changed to the extent necessary to defray the expenses incurred by the board in the performance of its duties but shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

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

C.45:5AA-7 Development of qualifying examination; renewal, granting of business permit, certificate.

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

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

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

d. If a renewal application and fee are not received by the board, the certificate shall expire, except that a person may renew a certificate within two years of its expiration upon payment of an appropriate fee to be set by the board. A new certificate, issued pursuant to the provisions of this act, shall be required of a person who fails to renew a certificate within two years of its expiration.

e. Each application for a business permit or its renewal shall be accompanied by proof of liability insurance, and workers' compensation insurance if workers' compensation insurance is required by law, and the appropriate fee. The applicant or permittee shall notify the board of any insurance changes.

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

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

C.45:5AA-8 Denial, suspension of certificate or business permit.

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

- (1) Has obtained a certificate or business permit or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- (2) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- (3) Has engaged in gross negligence or gross incompetence;
- (4) Has engaged in repeated acts of negligence or incompetence;
- (5) Has engaged in occupational misconduct as may be determined by the board;
- (6) Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activity regulated by the board. For the purpose of this paragraph a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction;
- (7) Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- (8) Has violated or failed to comply with the provisions of this act;
- (9) Is incapable, for medical or any other good cause, of discharging the functions of a certificate holder in a manner consistent with the public's health, safety and welfare; or
- (10) Has failed to comply with the continuing education requirements as provided in section 10 of P.L.2009, c.229 (C.45:5AA-7.1).

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

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

C.45:5AA-9 Violations, penalties.

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

b. If any person violates the provisions of P.L.1991, c.27 (C.45:5AA-1 et seq.) or any code, rule, regulation or order adopted or issued pursuant thereto, the board may assess a civil administrative penalty of not more than \$2,500 for the first offense and not more than \$5,000 for the second and each subsequent offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. No civil administrative penalty shall be levied except upon an administrative order issued pursuant to section 10 of P.L.1991, c.27 (C.45:5AA-10).

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

d. Any person who violates a provision of P.L.1991, c.27 (C.45:5AA-1 et seq.) or any code, rule, regulation, or order adopted or issued pursuant thereto, or a court order issued pursuant to subsection a. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section, is subject, upon order of the court, to a civil penalty of not more than \$2,500 for the first offense and not more than \$5,000 for the second and each subsequent offense.

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

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

C.45:5AA-10 Investigation, authority of board.

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

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

(2) order any person violating any provision of P.L.1991, c.27 (C.45:5AA-1 et seq.) or rules and regulations promulgated pursuant thereto to cease or desist from future violations or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board; or

(3) order any person found to have violated any provision of P.L.1991, c.27 (C.45:5AA-1 et seq.) or rules and regulations promulgated pursuant thereto to restore any person for whom

landscape irrigation contracting work was done to his position prior to performance of the work; or

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

(5) Bring a civil action for injunctive or any other appropriate relief to prohibit and prevent such violation or violations in accordance with section 9 of P.L. 1991, c. 27 (C. 45:5AA-9);

(6) Bring a civil action for a civil penalty in accordance with section 9 of P.L.1991, c.27 (C.45:5AA-9); or

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

The use of any of the remedies specified under this section shall not preclude use of any other remedy specified.

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

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

C.45:5AA-7.1 Standards for continuing education.

10. a. The board shall establish standards for continuing education for landscape irrigation contractors as a condition of certification renewal for certificates issued under its jurisdiction. The standards shall concern the subject matter and the number and type of continuing education credits to be required.

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

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

d. The board shall waive continuing education requirements under this section on an

individual basis for reasons of certified illness, undue hardship, disability, retirement, or other good cause.

11. This act shall take effect on the 180th day after the date of enactment, but the board may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved January 16, 2010.