

SENATE No. 02201

Senate, April 3, 2012 – New draft of Senate, No. 83 reported from the committee on Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to sustainable water conservation practices.

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 2010 Official Edition, is hereby
2 amended after Chapter 142A, by adding at the following new chapter:-

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

5 Section 1. Definitions

6 “Board”, the irrigation contractor board of registration.

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

10 “Division”, the Massachusetts Division of Insurance.

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

13 “Irrigation contractor”, a person who holds a certificate entitling him to be called by the
14 title “irrigation contractor” in the commonwealth under the authority of chapter 21G..

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

24 “Professional irrigation consultant”, an independent irrigation designer responsible for
25 the preparation of irrigation system plans and specifications, the observation of system
26 construction and recommendations for irrigation management and who is a certified irrigation
27 designer and derives more than eighty percent of their income from professional consulting
28 including irrigation related training..

29 Section 2. Irrigation Contractor Board of Registration

30 There shall be within the office of consumer affairs and business regulation an irrigation
31 contractor board of registration which shall consist of the director of the office of consumer
32 affairs and business regulation, or his designee, and six members to be appointed by the

33 governor, citizens of the commonwealth, three of whom shall have been engaged in the irrigation
34 contracting industry for a period of five years or more prior to their appointment and who hold a
35 certified irrigation contractor or certified irrigation designer designation in good standing with a
36 nationally recognized association, one of whom shall be an employee of the university of
37 massachusetts extension school and who has expertise in soil and horticulture, one of whom shall
38 be a full time professional irrigation consultant, and one of whom shall be a representative of the
39 public who is a registered professional engineer, architect, or landscape architect.

40 Each appointive member shall be appointed for a term of four years, except for persons
41 appointed to fill vacancies who shall serve for the unexpired term. As the term of office of a
42 member of the board expires, his successor shall be appointed in like manner for a term of four
43 years. Any vacancy in the membership occurring other than by expiration of a term shall be
44 filled in the same manner as the original appointment, but for the expired term only. Each
45 member shall continue to serve until the qualification of his successor. The governor may also
46 fill any vacancy in the board for the unexpired portion of the term.

47 The board shall hold at least two regular meetings each year and may hold such special
48 meetings as it may determine. At the first regular meeting each year, the board shall organize and
49 choose a chairman who shall be a member of the board and a secretary who may, but need not,
50 be a member of the board. At all meetings of the board a quorum shall consist of four members.

51 The members of the board shall serve without compensation. Each member shall receive
52 from the commonwealth the necessary travel and other expenses actually incurred by him in the
53 performance of his duties.

54 Section 3. Registration of irrigation contractors

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

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

68 Section 4. Registration applications; required information

69 In order to be registered as an irrigation contractor, an applicant shall make written
70 application under oath to the board on a form provided by him. Said application shall include but
71 may not be limited to verification that that they are at least eighteen years of age; are a citizen of
72 the United States or have legally declared their intention of so becoming; has education and
73 training equivalent to industry standards and guidelines relative to modern water management
74 skills and techniques for irrigated agriculture, turf, and landscape; is recognized as a watersense
75 partner by the federal environmental protection agency; and, whether the applicant has ever been
76 previously registered in the commonwealth as an irrigation contractor pursuant to this chapter,

77 under what other names he was previously registered, whether there have been previous
78 judgments or arbitration awards against him, whether there is money owing to the fund on
79 account of such judgments or awards against him, and whether his registration has ever been
80 suspended or revoked. Every applicant for registration as an irrigation contractor shall be
81 required, in addition to all other requirements, to establish, by written examination, his
82 competency to plan, construct, manage, install and supervise the installation of irrigation
83 systems. Each written examination may be supplemented by such oral examinations as the board
84 shall determine.

85 Section 5. Continuing education

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

93 Section 6. Exemptions

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

96 (a) An employee working under the direct supervision of a registered irrigation
97 contractor;

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

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

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

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

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

110 Section 7. Business permits; necessity; display

111 No firm, partnership or corporation shall represent themselves as an irrigation contracting
112 business or use the title irrigation contracting business in the commonwealth on any
113 advertisement, sign, title, card or other device to indicate that such person is an irrigation
114 contracting business, unless such firm, partnership or corporation shall have secured from the
115 board a business permit as an irrigation contracting business or is acting under the direct
116 supervision of a registered irrigation contractor. Every holder of a business permit shall display
117 it in a conspicuous place in its principal office. Nothing herein shall be construed to prevent a
118 firm, partnership or corporation from using the title “irrigation contractor” or “irrigation

119 contractors”, or similar title provided that the practice of irrigation contracting by such firm,
120 partnership or corporation shall be under the professional and supervisory control of a person
121 registered as a irrigation contractor and the entity holds a valid business permit.

122 Section 8. Qualifications for business permits

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

129 Section 9. Certificate of registration and business permit fees

130 Applicants for certificates of registration and for business permits shall pay a fee, to be
131 established bi-annually by the secretary for administration and finance pursuant to section three
132 B of chapter seven and shall be paid to the board on or before the thirty-first day of January of
133 every other year.

134 Each initial certificate of registration issued in accordance with this act shall expire on
135 January 31 of the second calendar year following issuance. All certificates of registration issued
136 thereafter shall remain valid for a period of two years and shall expire January 31 of the second
137 calendar year. A new permit issued anytime after the January 31 issuance date shall remain valid
138 until the regular January 31 date of expiration.

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

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

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

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

153 Section 10. Suspension, revocation or refusal of certificates and business permits; re-
154 issuance

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

157 (a) that the holder of such certificate of registration or business permit is in violation of
158 any provision of any rule or regulation promulgated by the board;

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

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

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

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

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

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

176 Section 11. Powers and Duties of the Irrigation Contractor Board of Registration

177 The board shall review applications for certification, develop and conduct the proper
178 examinations for certification, register and issue certificates of registration, take appropriate
179 disciplinary action, including but not limited to the assessment of penalties or the suspension or

180 revocation of said certification, require continuing education requirements, and maintain a
181 current roster of registered irrigation contractors in the commonwealth.

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

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

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

191 Section 12. Unlawful conduct; penalties

192 It shall be unlawful for any person to:

193 (a) hold himself as an irrigation contractor unless he is registered under the provisions of
194 this chapter;

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

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

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

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

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

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