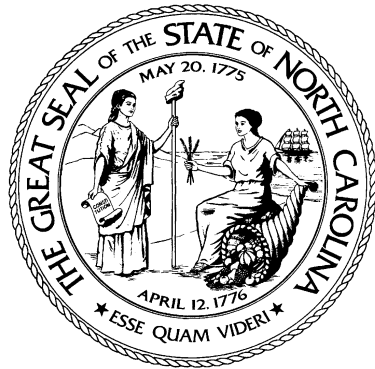


**JOINT LEGISLATIVE COMMITTEE
ON
NEW LICENSING BOARDS**

Final Report

**NORTH CAROLINA LANDSCAPE
CONTRACTOR'S LICENSURE/FEEES**

Senate Bill 447



JOINT LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

July 1, 2011

The Joint Legislative Committee on New Licensing Boards is pleased to release the final assessment report regarding the creation and licensure of the North Carolina Landscape Contractor's Licensing Board.

Senator Tommy Tucker
Chair

JOINT LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(2011-2012)

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PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- 1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- 2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- 3) Whether practice of the profession requires specialized skill or training.
- 4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
- 5) Whether the public can effectively be protected by other means.
- 6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues a final assessment report on its findings and recommendations. The recommendation in the report is not binding upon other committees considering the proposal.

SENATE BILL 447
LANDSCAPE CONTRACTOR LICENSURE/FEES

BACKGROUND¹

Current Standards

SB 447 Rewrite Landscape Contractor Laws will establish a license for North Carolina landscape contractors. Over the past forty years the North Carolina landscape industry has grown exponentially to meet the demand for landscape services. In 1975 the North Carolina landscape industry recognized the need to provide a minimal level of training and certification for those wishing to achieve a professional designation. A “title” act was passed establishing the NC Landscape Contractor’s Registration Board. Currently there are approximately 1000 NC Registered Landscape Contractors out of an estimated 10,000 businesses performing landscape contracting. The current registration is a voluntary training and testing process which, upon satisfactory completion, allows an individual or a business to *advertise* as a Landscape Contractor.

As the marketplace has grown more sophisticated in its need for trained, experienced landscape contractors to managing irrigation systems, install paving products, retaining wall systems, low voltage lighting, drainage work, grading and soil preparation to plant installation and provide long term care of plants the current “registration” has become inadequate to meet the needs of both the consumer and the landscape industry. Proven and accountable professionalism is in demand now more than ever and a simple registration or title act as is currently in place is not enough.

The proposed landscape contractor license will set a higher standard for best management practices through training, testing and annual continuing education requirements as well as provide basic business management and operation skills. This will assure that “licensed” landscape contractors are better prepared and qualified to conserve

¹ **Source:** *Response to Questionnaire for the Legislative Committee for New Licensing Boards.* A copy of the questionnaire is attached to this report.

our natural resources, help protect, preserve and enhance our environment and our quality of life while providing consumers with a quality product and service.

Consumer protection is another important aspect of the proposed license. Bonding requirements will be established for landscape contractors and oversight by the landscape contractors licensing board will provide consumers with a governing body to turn to should a problem arise.

LICENSING REQUIREMENTS

§ 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.
 - d. Designs, installs, or maintains low voltage landscape lighting systems.
 - e. Engages in the construction of garden pools, fountains, pavilions, arbors, retaining walls, fences, walks, patios, driveways, or other decorative landscape features, excluding poured concrete or asphalt driveways.
- (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

under the direct supervision of an individual 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.
- (c) 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.
- (d) 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 two thousand five hundred dollars (\$2,500).
- (6) Any person or business licensed pursuant to 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 when the contractor uses the contractor's own employees to perform landscape construction or contracting. A public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.
- (7) Any person or business licensed as an electrician under Article 4 of Chapter 87 of the General Statutes and installing low voltage lighting.
- (8) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, 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 in 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. North Carolina Department of Agriculture and Consumer Services certified sod producers that install sod, seed, or plugs.
 - 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.

§ 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 Pest Inspection Program.
 - (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 to:

- (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 monies 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) Has at least three years of experience in landscape construction or contracting or the educational equivalent. Two years of educational training in landscape construction or contracting shall be the equivalent of one year of experience.
 - (5) 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 pays the license fee required by G.S. 89D-21 and 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 exercise direct 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 pays the fee required by G.S. 89D-21 and complies with the following:
 - (1) One or more managers or executives, as defined in G.S. 57C-1-03, 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 exercise direct 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 pays the fee required by G.S. 89D-21 and 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 exercise direct 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 pays the fee required by G.S. 89D-21 and 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 exercise direct 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 exercise direct 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 (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 90 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 (a)(1), (b)(1), or (c)(1) of this section. After 90 days, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) 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. 57C-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 57C 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 and 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, the license shall be reinstated. Failure to request a reinstatement of the license and payment of the reinstatement 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 500.00
 - (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 pro-rated portion of the examination fee.

§ 89D-22. Disciplinary action.

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.

§ 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.(a) 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, newly structured under G.S. 89D-14(a), as enacted by Section 2 of this act, are appointed.

SECTION 3.(b) 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 4. Any person, who on or before December 31, 2011, 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, 2012:

- (1) Is registered as a landscape contractor.
- (2) Is licensed as an irrigation contractor.
- (3) Is certified as a turf grass professional.
- (4) Has 10 years of documented experience in the person's own business as a landscape contractor or 10 years of documented experience as an employee in a landscape contracting business, meets all other requirements and qualifications for licensure as a landscape contractor, and has one of the following:
 - 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 2012 calendar year to qualify for the landscape contractor's license, as enacted by Section 1 of this act.

SECTION 5. Section 1 of this act becomes effective August 1, 2012. The remainder of this act is effective when it becomes law.

FINDINGS AND RECOMMENDATIONS

NORTH CAROLINA LANDSCAPE CONTRACTOR'S

LICENSURE/FEEES

Findings

The Joint Legislative Committee on New Licensing Boards finds that the sponsors have met the six criteria by which the committee judges licensure proposals.

Specifically, the Committee finds that:

- ❖ The unregulated practice of landscape contractors has substantially impaired or compromised the safety and welfare of the consumer and often has caused financial harm. As such the consumer's confidence in the industry has often become compromised.
- ❖ Currently, the regulatory body in North Carolina is authorized by statute to register and monitor the profession but training, testing and continuing education is optional and voluntary.
- ❖ The profession possesses distinct qualities that distinguish it from ordinary labor as the vocation requires a well-rounded knowledge of horticultural, engineering, electrical, and construction practices and procedures. Further, the industry requires business management, sales and operational skills to be successful.
- ❖ As such, the profession requires an educated and licensed workforce to design and build environmentally sound and unique product while providing the consumer with a quality product and customer service.
- ❖ A substantial majority of the public does not have the knowledge or experience to measure or evaluate the credentials or competence of those advertising as or

registered as a landscape contractor. Presently, the public cannot be successfully or effectively protected by means other than professional licensure to safeguard their personal assets and financial interests.

- ❖ Licensure would not have a substantial adverse economic impact on the patients affected.

Recommendation

The Joint Legislative Committee on New Licensing Boards recommends that landscape contractors operating as such in North Carolina be professionally licensed. This report constitutes the final assessment report for the licensure of the profession. The report is based on the proposed licensing as set out in Senate Bill 447, the response to the committee's questionnaire, and remarks and testimony from interested parties before the committee in the course of meetings held during the 2011 Session of the North Carolina General Assembly.

ATTACHMENT

*Response to Questionnaire for the
Joint Legislative Committee on
New Licensing Boards*

QUESTIONS FOR THE JOINT LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

- In what ways has the marketplace failed to regulate adequately the profession or occupation?

Over the past thirty years landscape contracting in North Carolina has grown to a billion dollar plus industry. The number of companies and individuals engaged in the business of providing landscape services has increased exponentially since the late 1970's. An estimated 10,000 businesses statewide are engaged in some form of landscape contracting as defined by the proposed license legislation. Today consumers are challenged daily with how to decide on which landscape contracting business they can trust to have the skills and experience necessary to execute their work to proper standards and value. Currently there is a voluntary Registration or Title Act for Landscape Contractors in North Carolina. The Landscape Contractors Registration Board has very limited recourse in the event of a consumer complaint other than to revoke a landscape contractor's title.

- Have there been any complaints about the unregulated profession or occupation? Please give specific examples including (unless confidentiality must be maintained) complainants' names and addresses.

Yes, here is a sampling of complaints filed with the North Carolina Landscape Contractors Registration Board.

John and Kim Hooker
904 Alden Bridge Road
Cary, NC 27560

Mr. and Mrs. Hooker paid \$40,000 for landscaping work that was completely unacceptable. Homeowners told him to stop work and hired a landscape architect for advice on completing their landscape. Landscape architect advised they would need to start over. New project would total much more than the original \$40,000.00 paid to landscaper since the concrete basketball court would need to be ripped up because of improper foundation and was not level, picket fence used for retaining wall would need to be ripped out and stone wall did not have a proper foundation.

James Chamberlain,
Manager, Kruss
1020 Crews Road, Suite K
Matthews, NC

Mr. Chamberlain contracted for landscape work to be done on his home property for an undisclosed amount of money. Landscaper changed the amount on the deposit check that the wife gave to the landscaper so they fired him. Landscaper made physical threats against him and put a lien on their home. Upon further investigation, homeowner found that there are 20 lawsuits against this landscaper in the past nine years filed in Atlanta, San Diego, and Charlotte.

Constance Poitinger
2455 Talbot Court
Sherrills Ford, NC 28673

Ms. Poitinger paid the landscaper \$14,000. Contract was to transplant ten trees, provide pine needle mulch, irrigation system and sod, and level the backyard, with two terraces and a stone wall. Homeowner says all they received for their money was rotting sod, no irrigation, no stone wall, trees have not been replanted, and no pine needles, no flagstone steps and much more was left undone.

Jeff Baines
3615 Cattail Lane
Greenville, NC

Mr. Baines paid the landscape contractor \$7,000 to excavate backyard for patio and seat wall as per plan, install drainage and electrical conduit, construct paver stone patio, remove existing plants and transplant to desired locations, install landscape fabric and mulch with hardwood and install light fixtures. Project was supposed to take 13 days, the work was never completed.

Rev. Lynn Bolden
105 Holly Street
Washington, NC

Rev. Bolden paid the landscape contractor \$19,000.00 for services which included installation of planting beds and berms and plantings as per plot plan agreed upon. Install landscape fabric on all beds and mulch with pine straw, install annual area and mulch with hardwood, repair existing irrigation systems, install drip irrigation on new plant areas; apply post emergent herbicide to turf areas, grade, drain, fertilize, lime and seed with annual Rye grass.

Problem: Contractor did not show up when he said he would. Plants were delivered to driveway and sat through ice and snow until spring. More plants delivered in spring and sat through hot sun until May and June - 1/3 of the plant materials did not survive. Existing plant materials were uprooted by a bulldozer to a pile in yard where they sat from mid-January until June. Of the 58 plants, only 16 survived for transplanting. Berms were constructed without spaces between them causing flooding and standing water. Work not completed on yard and work that was done was unacceptable

- In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation? Please give specific examples.

As illustrated in the previous question examples, landscape contracting work was not performed to adequate standards; no degree of professionalism was evident in either business practices or installation procedures or follow up. The consumers lost money and were placed at risk of water damage, the further expense of clean up and finally having to pay to have the work redone.

- Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, or welfare? How can this potential for substantial harm or danger be recognized?

Untrained, uninsured, un-bonded landscape contracting individuals or businesses have the potential to do great harm;

This harm can be recognized in dissatisfied consumers, landscapes or elements of landscapes that do not perform to the standards necessary to protect the environment and the goals for which they were initially installed. Improperly installed landscape elements could also create physical risks to the consumer and the public at large;

Additionally, without proper training and continuing education misuse of water on landscape sites can occur. Properly designed, installed and maintained landscapes can greatly reduce supplemental water requirements.

- Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).

Yes, Arkansas, California, Connecticut, Mississippi, Oregon, Texas and West Virginia all have landscape contracting licensure requirements. There is no federal law or related citations regulating landscape contracting.

- What will be the economic advantage of licensing to the public?

Consumers will have more confidence in the services they are purchasing from licensed landscape contractors and more confidence in the basic business practices and legitimacy of those companies or individuals;

Consumers will have a complaint process that will provide meaningful action and results through the licensing board;

Licensing will insure a level of competency that will reduce poor quality work and services;

Licensing will require continuing education credits for contractors to maintain their license which will insure that licensees are continually learning and improving their technical skills and their business practice knowledge;

These steps will reduce the economic risk to the consumer by giving them a professional, license designation to look for in the marketplace.

- What will be the economic disadvantage of licensing to the public?

We see no economic disadvantage to the public.

There is no direct evidence to suggest that the availability of contractors would be reduced (there are currently nearly 1000 registered landscape contractors under the current title act) thousands more unregistered.

There is no indication that prices would increase (in the current economic conditions contractors are value pricing their work to entice consumers into spending money on landscape services and are desperately looking for the professional recognition that a landscape contractor license would afford them).

- What will be the economic advantages of licensing to the practitioners?

Requirement of licensure will help level the playing field in the marketplace for all landscape contractors. Consumers will know that when they request bids for work that all licensed landscape contractors will have a certain degree of training and proficiency that will translate into how they price and perform their work.

Licensed contractors will possess a greater variety of skills as result of the continuing education requirements which should translate into greater opportunities for different types of projects.

- What will be the economic disadvantages of licensing to the practitioners?

Minimal:

Fee for initial testing and licensure, (One time only, as long as the provisions of maintaining the licenses are met.)

Fee for license annual renewal;

Fee for bond requirements; (A multi-year bond can be purchased which means a discounted rate and the need to apply only every 2 or 3 years.)

Time commitment to attend continuing education classes; (Many, if not all CEU classes will be available through the Cooperative Extension Service and at trade association meetings and tradeshow.)

In total this represents minimal financial cost (less than \$300 annually, including the bond).

- Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.

The availability and awareness of trained, professional landscape contractors that are capable of and can be trusted to perform to high standards would give the consumer the confidence to invest in their services.

Consumer confidence cannot be overstated. This confidence is crucial to the survival and continued growth of the landscape industry in North Carolina.

- Please detail the specific specialized skills or training that distinguishes the occupation or profession from ordinary labor.

Knowledge of all types of landscape construction (such as walkways, retaining walls, patios, fences, arbors, irrigation systems, water features, low voltage lighting, grading, planting and installation of turf) and the ability to implement the work to the proper standards.

Knowledge of the design and installation of water efficient landscapes, rain gardens and other aspects of water wise landscapes that conserve water;

Knowledge of the use of varying types of specialized equipment and tools;

Knowledge of plant materials (trees, shrubs and other plants) that enhance the environment by planted in the proper location based on their cultural and growth characteristics; Knowledge of job costing, estimating, contracting and basic business skills.

- What are other qualities of the profession or occupation that distinguish it from ordinary labor?

The ability to take all the knowledge and skills outlined in question eleven and implement them on a daily basis in the management and execution of a landscape contracting business while continuing to learn about new practices, products and services that may enhance and protect the environment and deliver added value to the consumer.

- Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

No, not all practicing members of the occupation will be covered.

The rationale for some exemptions is that the individuals or entities identified for exemption would either be unnecessary for them to comply with the licensing requirements based on the nature of their business services, the possession of other certifications or licenses or they would fall below the dollar value threshold for which a landscape contracting license would be required.

Exemptions are:

Federal state or local government performing landscaping on public property, NC DOT landscaping contracts below \$300,000, general contractors that install their own landscape jobs, private homeowners that do their own work on their property, golf courses, landscape architects, engineers, utility contractors, tree service contractors, lawn service contractors, turf management contractors, sod producers and nurseries that install their own plants or grading contractors who grade and clear plots of land.

- What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

Estimate is (5500) plus people/businesses would be regulated by this license. There are many thousands more that would either be exempt by definition or fall under the dollar threshold for licensure.

There are currently nearly 1000 registered landscape contractors under the existing Title Act.

The number of people utilizing the services of this profession is estimated to be 2.9 million plus (according to the 2005 Economic Impact Study of the NC Green Industry).

- What kind of knowledge or experience does the public need to evaluate the services offered by the practitioner?

The designation of being a licensed landscape contractor would provide the consumer with confidence to engage that individual or company in negotiations for their services.

The experience of the current Title act registration board indicates that consumers are looking for licensed landscape contractors and they are surprised to learn upon inquiry that there is currently no license requirement.

- Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?

As indicated, there is currently a Title Act that provides for a voluntary registration process for landscape contractors and within that registration there is a code of ethics. There is no continuing education requirement, no bond requirement, or established minimum standards.
