

840

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the
landscape irrigation contractor certification act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "landscape
2 irrigation contractor certification act".

3 S 2. The general business law is amended by adding a new article 33-C
4 to read as follows:

5 ARTICLE 33-C

6 LANDSCAPE IRRIGATION CONTRACTORS

7 SECTION 698-A. DEFINITIONS.

8 698-B. CERTIFICATION REQUIRED.

9 698-C. POWERS OF THE SECRETARY OF STATE.

10 698-D. ADVISORY COMMITTEE.

11 698-E. EXAMINATION.

12 698-F. APPLICATION AND CERTIFICATION.

13 698-G. RENEWAL OF CERTIFICATE.

14 698-H. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATION.

15 698-I. PERFORMANCE AS LANDSCAPE IRRIGATION CONTRACTOR

16 AUTHORIZED.

17 698-J. ENFORCEMENT.

18 698-K. SEPARABILITY.

19 S 698-A. DEFINITIONS. AS USED IN THIS ARTICLE:

20 1. "COMMITTEE" MEANS THE LANDSCAPE IRRIGATION CONTRACTORS ADVISORY
21 COMMITTEE ESTABLISHED PURSUANT TO SECTION SIX HUNDRED NINETY-EIGHT-D OF
22 THIS ARTICLE.

23 2. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

24 3. "SECRETARY" MEANS THE SECRETARY OF STATE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD02840-01-9

1 4. "LANDSCAPE IRRIGATION CONTRACTING" MEANS THE CONSTRUCTION, INSTAL-
2 LATION, REPAIR AND MAINTENANCE OF ANY PORTION OF A LANDSCAPE IRRIGATION
3 SYSTEM, BUT SHALL NOT INCLUDE MINOR MAINTENANCE AND REPAIRS AS DEFINED
4 BY THE SECRETARY UNDER THE POWERS GRANTED TO THE SECRETARY UNDER SECTION
5 SIX HUNDRED NINETY-EIGHT-C OF THIS ARTICLE.

6 5. "LANDSCAPE IRRIGATION CONTRACTOR" MEANS A PERSON WHO IS CERTIFIED
7 TO DO LANDSCAPE IRRIGATION CONTRACTING.

8 6. "LANDSCAPE IRRIGATION CONTRACTOR CERTIFICATE" OR "CERTIFICATE"
9 MEANS THE CERTIFICATE ISSUED BY THE SECRETARY.

10 7. "LANDSCAPE IRRIGATION SYSTEM" MEANS ANY ASSEMBLAGE OF COMPONENTS,
11 MATERIALS OR SPECIAL EQUIPMENT WHICH IS CONSTRUCTED AND PERMANENTLY
12 INSTALLED PREDOMINANTLY UNDERGROUND FOR CONTROLLED DISPERSION OF WATER
13 FROM ANY SAFE AND SUITABLE SOURCE, INCLUDING PROPERLY TREATED WASTEWA-
14 TER, FOR THE PURPOSE OF IRRIGATING LANDSCAPE VEGETATION OR THE CONTROL
15 OF DUST AND EROSION ON LANDSCAPED AREAS, INCLUDING INTEGRAL PUMPING
16 SYSTEMS OR INTEGRAL CONTROL SYSTEMS FOR MANUAL, SEMI-AUTOMATIC OR AUTO-
17 MATIC CONTROL OF THE OPERATION OF THESE SYSTEMS.

18 8. "DIRECT SUPERVISION" MEANS A PERSON ACTING UNDER THE INSTRUCTIONS
19 AND CONTROL OF AN INDIVIDUAL CERTIFIED TO CONDUCT LANDSCAPE IRRIGATION
20 CONTRACTING.

21 S 698-B. CERTIFICATION REQUIRED. 1. NO PERSON SHALL ENGAGE IN THE
22 BUSINESS OF LANDSCAPE IRRIGATION CONTRACTING OR ADVERTISE AS BEING ABLE
23 SO TO DO UNLESS SUCH PERSON HAS OBTAINED FROM THE SECRETARY A CERTIF-
24 ICATE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

25 2. AN AUTOMATIC LANDSCAPE IRRIGATION SYSTEM, INSTALLED AFTER THE
26 EFFECTIVE DATE OF THIS ARTICLE, SHALL BE EQUIPPED WITH AN AUTOMATIC RAIN
27 SENSOR DEVICE OR SWITCH THAT WILL OVERRIDE THE IRRIGATION CYCLE OF THE
28 AUTOMATIC LANDSCAPE IRRIGATION SYSTEM WHEN ADEQUATE RAINFALL HAS
29 OCCURRED. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO AN IRRI-
30 GATION SYSTEM INSTALLED TO IRRIGATE ANY FIELD CROPS, GRAIN, SOY BEANS,
31 HAY, FRUITS, VEGETABLES, CHRISTMAS TREES, HORTICULTURAL SPECIALTIES TO
32 BE OFFERED FOR SALE, INCLUDING NURSERY STOCK, ORNAMENTAL SHRUBS, ORNA-
33 MENTAL TREES, FLOWERS, AND TURF ON TURF FARMS.

34 3. THE FOLLOWING SHALL NOT BE REQUIRED TO BE CERTIFIED PURSUANT TO
35 SUBDIVISION ONE OF THIS SECTION:

36 (A) AN EMPLOYEE WORKING UNDER THE DIRECT SUPERVISION OF A PERSON
37 CERTIFIED TO ENGAGE IN THE BUSINESS OF LANDSCAPE IRRIGATION CONTRACTING;

38 (B) A LANDSCAPE ARCHITECT LICENSED PURSUANT TO ARTICLE ONE HUNDRED
39 FORTY-EIGHT OF THE EDUCATION LAW;

40 (C) A PROFESSIONAL ENGINEER LICENSED PURSUANT TO ARTICLE ONE HUNDRED
41 FORTY-FIVE OF THE EDUCATION LAW;

42 (D) AN ARCHITECT LICENSED PURSUANT TO ARTICLE ONE HUNDRED FORTY-SEVEN
43 OF THE EDUCATION LAW;

44 (E) A HOMEOWNER WHO INSTALLS A LANDSCAPE IRRIGATION SYSTEM AT HIS OR
45 HER PLACE OF RESIDENCE;

46 (F) A BUSINESS OWNER WHO INSTALLS A LANDSCAPE IRRIGATION SYSTEM AT HIS
47 OR HER PLACE OF BUSINESS; AND

48 (G) ANYONE INSTALLING AN IRRIGATION SYSTEM TO IRRIGATE ANY FIELD
49 CROPS, GRAIN, SOY BEANS, HAY, FRUITS, VEGETABLES, CHRISTMAS TREES,
50 HORTICULTURAL SPECIALTIES TO BE OFFERED FOR SALE, INCLUDING NURSERY
51 STOCK, ORNAMENTAL SHRUBS, ORNAMENTAL TREES, FLOWERS, AND TURF ON TURF
52 FARMS.

53 S 698-C. POWERS OF THE SECRETARY OF STATE. IN ADDITION TO THE POWERS
54 AND DUTIES PRESCRIBED ELSEWHERE IN THIS ARTICLE, THE SECRETARY SHALL
55 HAVE THE POWER TO:

1 1. APPOINT AN ADEQUATE NUMBER OF ASSISTANTS, INSPECTORS AND OTHER
2 EMPLOYEES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTI-
3 CLE, TO PRESCRIBE DUTIES, AND TO FIX COMPENSATION WITHIN THE AMOUNT
4 APPROPRIATED THEREFOR.

5 2. REVIEW THE QUALIFICATIONS OF APPLICANTS SEEKING CERTIFICATES UNDER
6 THIS ARTICLE.

7 3. KEEP RECORDS OF ALL CERTIFICATES ISSUED, SUSPENDED OR REVOKED.

8 4. PREPARE A MANUAL OF RULES AND REGULATIONS FOR THE CONDUCT OF EXAM-
9 INATIONS AND TO FURNISH COPIES THEREOF TO PERSONS DESIRING A COPY OF
10 SUCH RULES AND REGULATIONS UPON THE RECEIPT OF A REASONABLE FEE THERE-
11 FOR.

12 5. ADOPT SUCH RULES AND REGULATIONS CONSISTENT WITH THE PROVISIONS OF
13 THIS ARTICLE, AS MAY BE NECESSARY WITH RESPECT TO THE FORM AND CONTENT
14 OF APPLICATIONS FOR CERTIFICATES AND THE RECEPTION THEREOF, THE INVESTI-
15 GATION, EXAMINATION AND QUALIFICATIONS OF APPLICANTS AND GENERAL RULES
16 REGARDING THE INSTALLATION OF LANDSCAPE IRRIGATION SYSTEMS.

17 6. ADOPT ANY OTHER MATTERS INCIDENTAL OR APPROPRIATE TO THE POWERS AND
18 DUTIES AS THE SECRETARY PRESCRIBED BY THIS ARTICLE AND FOR THE PROPER
19 ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE.

20 7. AMEND OR REPEAL ANY OF SUCH RULES AND REGULATIONS CONSISTENT WITH
21 THE PROVISIONS IN THIS ARTICLE.

22 S 698-D. ADVISORY COMMITTEE. 1. THERE SHALL BE ESTABLISHED WITHIN THE
23 DEPARTMENT AN ADVISORY COMMITTEE WHICH SHALL CONSIST OF SEVEN MEMBERS
24 BROADLY REPRESENTING THE LANDSCAPE IRRIGATION CONTRACTING INDUSTRY. THE
25 SECRETARY SHALL APPOINT SUCH PERSONS TO SERVE ON THE COMMITTEE,
26 PROVIDED, THAT TWO SHALL BE APPOINTED BY THE SECRETARY ON THE RECOMMEN-
27 DATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND TWO SHALL BE
28 APPOINTED BY THE SECRETARY ON THE RECOMMENDATION OF THE SPEAKER OF THE
29 ASSEMBLY. THE SECRETARY SHALL APPOINT A CHAIRPERSON. EACH MEMBER SHALL
30 BE APPOINTED FOR A TERM OF TWO YEARS. ANY MEMBER MAY BE REAPPOINTED TO
31 SERVE ADDITIONAL TERMS. IN MAKING SAID APPOINTMENTS THE SECRETARY WILL
32 GIVE CONSIDERATION TO INSURING ADEQUATE GEOGRAPHIC REPRESENTATION.

33 2. THE ADVISORY COMMITTEE SHALL ADVISE THE SECRETARY ON ALL MATTERS
34 RELATING TO THIS ARTICLE, AND ON OTHER SUCH MATTERS AS THE SECRETARY
35 SHALL REQUEST.

36 S 698-E. EXAMINATION. 1. THE SECRETARY SHALL DEVELOP, OR CAUSE TO BE
37 DEVELOPED, A WRITTEN EXAMINATION TO EVALUATE THE KNOWLEDGE, ABILITY, AND
38 FITNESS OF APPLICANTS TO PERFORM AS LANDSCAPE IRRIGATION CONTRACTORS.

39 2. THE EXAMINATION FEE SHALL BE ONE HUNDRED DOLLARS.

40 S 698-F. APPLICATION AND CERTIFICATION. 1. A PERSON SEEKING CERTIF-
41 ICATION AS A LANDSCAPE IRRIGATION CONTRACTOR SHALL APPLY THEREFOR ON
42 FORMS PRESCRIBED AND PROVIDED BY THE SECRETARY, AND PAY THE APPLICATION
43 FEE. IN ADDITION TO ANY OTHER INFORMATION OR DOCUMENTS THAT MAY BE
44 REQUIRED BY THE SECRETARY, EACH APPLICANT SHALL SUBMIT SATISFACTORY
45 EVIDENCE THAT THE APPLICANT:

46 (A) IS AT LEAST EIGHTEEN YEARS OF AGE;

47 (B) HAS PASSED THE EXAMINATION REQUIRED PURSUANT TO SUBDIVISION ONE OF
48 SECTION SIX HUNDRED NINETY-EIGHT-E OF THIS ARTICLE; AND

49 (C) HAS A MINIMUM OF SIX MONTHS OF EXPERIENCE IN THE FIELD OF LAND-
50 SCAPE IRRIGATION.

51 2. AFTER SUCCESSFULLY PASSING THE DESIGNATED EXAMINATION ANY PERSON
52 DESIRING A CERTIFICATE TO ENGAGE IN THE BUSINESS OF LANDSCAPE IRRIGATION
53 CONTRACTING MAY MAKE APPLICATION TO THE SECRETARY THEREFOR. THE APPLI-
54 CATION SHALL BE SUBSCRIBED BY THE APPLICANT AND AFFIRMED BY THE APPLI-
55 CANT AS TRUE UNDER THE PENALTIES OF PERJURY. THE APPLICATION SHALL BE
56 IN SUCH FORM AND SHALL CONTAIN SUCH INFORMATION RELATIVE TO THE APPLI-

CANT AND HIS OR HER QUALIFICATIONS AS MAY BE PRESCRIBED BY THE SECRETARY. EACH APPLICATION SHALL BE ACCOMPANIED BY EVIDENCE OF THE APPLICANT HAVING SUCCESSFULLY PASSED THE EXAMINATION REQUIRED PURSUANT TO THIS ARTICLE. UPON RECEIPT OF THE APPLICATION AND FEE, THE SECRETARY SHALL ISSUE TO SUCH QUALIFIED APPLICANT A CERTIFICATE TO ENGAGE IN THE BUSINESS OF LANDSCAPE IRRIGATION CONTRACTING. THE CERTIFICATE SHALL EXPIRE TWO YEARS FROM THE DATE OF ISSUANCE.

3. THE APPLICATION FEE SHALL BE ONE HUNDRED DOLLARS.

S 698-G. RENEWAL OF CERTIFICATE. 1. THE SECRETARY SHALL DEVELOP AND ESTABLISH, IN CONSULTATION WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SECTION SIX HUNDRED NINETY-EIGHT-D OF THIS ARTICLE, RULES AND REGULATIONS PERTAINING TO REQUIREMENTS FOR CONTINUING EDUCATION OF CERTIFICATE HOLDERS. THE FEE FOR RENEWAL OF A CERTIFICATE SHALL BE FIFTY DOLLARS.

2. UPON PAYMENT OF THE REQUISITE FEE AND SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE CONTINUING EDUCATION REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, THE SECRETARY SHALL RENEW THE CERTIFICATE FOR AN ADDITIONAL TWO YEAR PERIOD. CERTIFICATE HOLDERS SEEKING A RENEWAL SHALL NOT BE REQUIRED TO TAKE THE EXAMINATION REQUIRED PURSUANT TO SECTION SIX HUNDRED NINETY-EIGHT-E OF THIS ARTICLE.

S 698-H. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATION. A CERTIFICATE TO ENGAGE IN THE BUSINESS OF LANDSCAPE IRRIGATION CONTRACTING ISSUED BY THE SECRETARY PURSUANT TO THIS ARTICLE MAY BE DENIED, SUSPENDED OR REVOKED, FOR ANY ONE OR MORE OF THE FOLLOWING CAUSES:

1. FRAUD OR BRIBERY IN SECURING A CERTIFICATE;
2. ENGAGING IN DISHONESTY, FRAUD, DECEPTION, MISREPRESENTATION, FALSE PROMISE OR FALSE PRETENSE;
3. GROSS NEGLIGENCE OR INCOMPETENCE;
4. REPEATED ACTS OF NEGLIGENCE OR INCOMPETENCE; OR
5. VIOLATION OF, OR FAILURE TO COMPLY WITH, THE PROVISIONS OF THIS ARTICLE.

S 698-I. PERFORMANCE AS LANDSCAPE IRRIGATION CONTRACTOR AUTHORIZED. 1. THE ISSUANCE OF A CERTIFICATE BY THE SECRETARY SHALL AUTHORIZE ANY CERTIFICATE HOLDER TO PERFORM LANDSCAPE IRRIGATION CONTRACTING IN ANY MUNICIPALITY, COUNTY OR OTHER POLITICAL SUBDIVISION OF THE STATE, AND NO FURTHER EXAMINATION OR SPECIAL LICENSE SHALL BE REQUIRED OF THE CERTIFICATE HOLDER, EXCEPT BUSINESS LICENSES, PERMIT FEES, AND SUCH OTHER STANDARD LICENSES AND FEES AS MAY BE REQUIRED OF ANY PERSON DOING BUSINESS WITHIN THE JURISDICTION OF SUCH POLITICAL SUBDIVISION.

2. NOTHING SET FORTH IN THIS SECTION SHALL AUTHORIZE A LANDSCAPE IRRIGATION CONTRACTOR TO ENGAGE IN THE SCOPE OF PRACTICE OF ANY PROFESSION REQUIRED TO BE LICENSED BY TITLE EIGHT OF THE EDUCATION LAW.

3. NOTHING SET FORTH IN THIS SECTION SHALL AUTHORIZE A LANDSCAPE IRRIGATION CONTRACTOR TO USE A PROFESSIONAL TITLE OF ANY PROFESSION REQUIRED TO BE LICENSED BY TITLE EIGHT OF THE EDUCATION LAW.

S 698-J. ENFORCEMENT. 1. ANY PERSON VIOLATING ANY PROVISION OF THIS ARTICLE SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR THE FIRST OFFENSE AND NOT MORE THAN ONE THOUSAND DOLLARS FOR THE SECOND AND EACH SUBSEQUENT OFFENSE. IN LIEU OF AN ADMINISTRATIVE PROCEEDING, THE SECRETARY MAY BRING AN ACTION FOR THE COLLECTION OR ENFORCEMENT OF CIVIL PENALTIES FOR THE VIOLATION OF ANY PROVISION OF THIS ARTICLE.

2. WHENEVER IT SHALL APPEAR TO THE SECRETARY THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, IS OCCURRING OR WILL OCCUR, THE SECRETARY MAY SEEK AND OBTAIN IN A SUMMARY PROCEEDING IN THE SUPREME COURT, AN INJUNCTION PROHIBITING THE ACT OR PRACTICE. IN SUCH PROCEEDING THE COURT MAY ENTER

1 THOSE ORDERS NECESSARY TO PREVENT THE PERFORMANCE OF AN UNLAWFUL PRAC-
2 TICE IN THE FUTURE AND ASSESS A CIVIL PENALTY IN ACCORDANCE WITH THE
3 PROVISIONS OF THIS ARTICLE.

4 S 698-K. SEPARABILITY. IN THE EVENT IT IS DETERMINED BY A COURT OF
5 COMPETENT JURISDICTION THAT ANY PHRASE, CLAUSE, PART, SUBDIVISION, PARA-
6 GRAPH OR SECTION, OR ANY OTHER PROVISIONS OF THIS ARTICLE, IS UNCONSTI-
7 TUTIONAL OR OTHERWISE INVALID OR INOPERATIVE, SUCH DETERMINATION SHALL
8 NOT AFFECT THE VALIDITY OR EFFECT OF THE REMAINING PROVISIONS OF THIS
9 ARTICLE.

10 S 3. This act shall take effect immediately except that subdivision 1
11 of section 698-b of the general business law, as added by section two of
12 this act, shall take effect 18 months after this act shall have become a
13 law.