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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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

ARTICLE 33-C

LANDSCAPE IRRIGATION CONTRACTORS

SECTION 698-A. DEFINITIONS.
698-B. CERTIFICATION REQUIRED.
698-C. POWERS OF THE SECRETARY OF STATE.
698-D. ADVISORY COMMITTEE.
698-E. EXAMINATION.
698-F. APPLICATION AND CERTIFICATION.
698-G. RENEWAL OF CERTIFICATE.
698-H. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATION.
698-I. PERFORMANCE AS LANDSCAPE IRRIGATION CONTRACTOR AUTHORIZED.
698-J. ENFORCEMENT.
698-K. SEPARABILITY.

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

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

2. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

3. "SECRETARY" MEANS THE SECRETARY OF STATE.

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

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

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

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

7. "LANDSCAPE IRRIGATION SYSTEM" MEANS ANY ASSEMBLAGE OF COMPONENTS, MATERIALS OR SPECIAL EQUIPMENT WHICH IS CONSTRUCTED AND PERMANENTLY INSTALLED PREDOMINANTLY UNDERGROUND 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. PREPARE A MANUAL OF RULES AND REGULATIONS FOR THE CONDUCT OF EXAMINATIONS AND TO FURNISH COPIES THEREOF TO PERSONS DESIRING A COPY OF SUCH RULES AND REGULATIONS UPON THE RECEIPT OF A REASONABLE FEE THEREFOR.

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

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

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

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

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

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

2. THE EXAMINATION FEE SHALL BE ONE HUNDRED DOLLARS.

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

(A) IS AT LEAST EIGHTEEN YEARS OF AGE;

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

(C) HAS A MINIMUM OF SIX MONTHS OF EXPERIENCE IN THE FIELD OF LANDSCAPE IRRIGATION.

2. AFTER SUCCESSFULLY PASSING THE DESIGNATED EXAMINATION ANY PERSON DESIRING A CERTIFICATE TO ENGAGE IN THE BUSINESS OF LANDSCAPE IRRIGATION CONTRACTING MAY MAKE APPLICATION TO THE SECRETARY THEREFOR. THE APPLICATION SHALL BE SUBSCRIBED BY THE APPLICANT AND AFFIRMED BY THE APPLICANT AS TRUE UNDER THE PENALTIES OF PERJURY. THE APPLICATION SHALL BE 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

THOSE ORDERS NECESSARY TO PREVENT THE PERFORMANCE OF AN UNLAWFUL PRACTICE IN THE FUTURE AND ASSESS A CIVIL PENALTY IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

S 698-K. SEPARABILITY. IN THE EVENT IT IS DETERMINED BY A COURT OF COMPETENT JURISDICTION THAT ANY PHRASE, CLAUSE, PART, SUBDIVISION, PARAGRAPH OR SECTION, OR ANY OTHER PROVISIONS OF THIS ARTICLE, IS UNCONSTITUTIONAL OR OTHERWISE INVALID OR INOPERATIVE, SUCH DETERMINATION SHALL NOT AFFECT THE VALIDITY OR EFFECT OF THE REMAINING PROVISIONS OF THIS ARTICLE.

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