

SENATE No. 83

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen M. Brewer

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to sustainable water conservation practices.

PETITION OF:

NAME:

Stephen M. Brewer

DISTRICT/ADDRESS:

*Worcester, Hampden, Hampshire and
Middlesex*

SENATE No. 83

By Mr. Brewer, a petition (accompanied by bill, Senate, No. 83) of Stephen M. Brewer for legislation relative to sustainable water conservation practices. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 107 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official Edition, are hereby
2 amended in section 2 of chapter 21G by adding, after the definition of Annual statement of
3 withdrawal?, the following new definitions:-

4 "Board", the irrigation contractor board of registration.

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

8 Said section 2 of chapter 21G is hereby further amended by adding, after the definition of
9 "Department", the following new definition:-

10 "Division", the Massachusetts Division of Insurance.

11 And is hereby further amended by adding, after the definition of "Existing withdrawal",
12 the following new definitions:-

13 "Irrigation contracting", the construction, installation, repair, maintenance, improvement,
14 winterization and alteration of any portion of an irrigation system.

15 "Irrigation contractor", a person who holds a certificate entitling him to be called by the
16 title "irrigation contractor" in the commonwealth under the authority of chapter 21G..

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

26 "Professional irrigation consultant", an independent irrigation designer responsible for the
27 preparation of irrigation system plans and specifications, the observation of system construction
28 and recommendations for irrigation management and who derives more than eighty percent of
29 their income from professional consulting.

30 SECTION 2. The General Laws, as appearing in the 2008 Official Edition, are hereby
31 amended by adding at the end thereof the following new sections:-

32 Section ____ . Irrigation Contractor Board of Registration

33 There shall be within the department of environmental protection an irrigation contractor
34 board of registration which shall consist of the commissioner of the department of environmental
35 protection, or his designee, and six members to be appointed by the governor, citizens of the
36 commonwealth, three of whom shall have been engaged in the irrigation contracting industry for
37 a period of five years or more prior to their appointment and who hold a certified irrigation
38 contractor or certified irrigation designer designation in good standing with a nationally
39 recognized association, one of whom shall have experience as manufacturer or distributor of
40 irrigation equipment, systems or components thereof, one of whom shall be a full time
41 professional irrigation consultant, and one of whom shall be a representative of the public who is
42 a professional engineer or landscape architect.

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

50 The board shall hold at least two regular meetings each year and may hold such special
51 meetings as it may determine. At the first regular meeting each year, the board shall organize and

52 choose a chairman who shall be a member of the board and a secretary who may, but need not,
53 be a member of the board. At all meetings of the board a quorum shall consist of four members.

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

57 Section _____. Registration of irrigation contractors

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

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

71 Section _____. Registration applications; required information

72 In order to be registered as an irrigation contractor, an applicant shall make written
73 application under oath to the board on a form provided by him. Said application shall include but
74 may not be limited to verification that that they are at least eighteen years of age; are a citizen of
75 the United States or have legally declared their intention of so becoming; has education and
76 training equivalent to industry standards and guidelines relative to modern water management
77 skills and techniques for irrigated agriculture, turf, and landscape; is recognized as a watersense
78 partner by the federal environmental protection agency; and, whether the applicant has ever been
79 previously registered in the commonwealth as an irrigation contractor pursuant to this chapter,
80 under what other names he was previously registered, whether there have been previous
81 judgments or arbitration awards against him, whether there is money owing to the fund on
82 account of such judgments or awards against him, and whether his registration has ever been
83 suspended or revoked. Every applicant for registration as an irrigation contractor shall be
84 required, in addition to all other requirements, to establish, by written examination, his
85 competency to plan, construct, manage, install and supervise the installation of irrigation
86 systems. Each written examination may be supplemented by such oral examinations as the board
87 shall determine.

88 Section ____ . Continuing education

89 The board shall establish continuing education standards and requirements for the
90 renewal of an irrigation contractor certificate, including the subject matter, type and number of
91 credits required for each renewal. The department shall approve qualifying, continuing education
92 programs including but not limited to programs provided by accredited educational institutions
93 or relevant professional and technical associations. The department may waive continuing

94 education requirements required under this act on an individual basis for reasons of illness,
95 undue hardship, disability, retirement or other cause it deems appropriate.

96 Section ____ . Exemptions

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

99 (a) An employee working under the direct supervision of a registered irrigation
100 contractor;

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

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

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

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

110 (f) Duly certified and in good standing landscape architectural firms, professional
111 engineering firms and irrigation consulting firms providing only design and oversight services of
112 irrigation system projects on a full time basis.

113 Section ____ . Business permits; necessity; display

114 No firm, partnership or corporation shall represent themselves as an irrigation contracting
115 business or use the title irrigation contracting business in the commonwealth on any
116 advertisement, sign, title, card or other device to indicate that such person is an irrigation
117 contracting business, unless such firm, partnership or corporation shall have secured from the
118 board a business permit as an irrigation contracting business or is acting under the direct
119 supervision of a registered irrigation contractor. Every holder of a business permit shall display
120 it in a conspicuous place in its principal office. Nothing herein shall be construed to prevent a
121 firm, partnership or corporation from using the title "irrigation contractor" or "irrigation
122 contractors", or similar title provided that the practice of irrigation contracting by such firm,
123 partnership or corporation shall be under the professional and supervisory control of a person
124 registered as a irrigation contractor and the entity holds a valid business permit.

125 Section ____ . Qualifications for business permits

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

132 Section 8. Certificate of registration and business permit fees

133 Applicants for certificates of registration and for business permits shall pay a fee, to be
134 established bi-annually by the secretary for administration and finance pursuant to section three

135 B of chapter seven and shall be paid to the board on or before the thirty-first day of January of
136 every other year.

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

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

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

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

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

156 Section ____ . Suspension, revocation or refusal of certificates and business permits; re-
157 issuance

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

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

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

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

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

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

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

175 The board may reissue a certificate of registration or business permit to any person whose
176 certificate of registration or business permit has been revoked. Application for the re-issuance of

177 a certificate of registration or business permit shall be made in such manner as the board may
178 direct.

179 Section ____ . Powers and Duties of the Irrigation Contractor Board of Registration

180 The board shall review applications for certification, develop and conduct the proper
181 examinations for certification, register and issue certificates of registration, take appropriate
182 disciplinary action, including but not limited to the assessment of penalties or the suspension or
183 revocation of said certification, require continuing education requirements, and maintain a
184 current roster of registered irrigation contractors in the commonwealth.

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

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

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

194 Section ____ . Unlawful conduct; penalties

195 It shall be unlawful for any person to:

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

- 198 (b) present as his own the certificate of registration of another;
- 199 (c) give false or forged evidence to the board of registration or any member thereof in
200 obtaining a certificate;
- 201 (d) falsely impersonate any other registrant of like or different name;
- 202 (e) use or attempt to use a certificate of registration that has been revoked; or
- 203 (f) otherwise violate any of the provisions of said sections.

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