

HOUSE No. 468

The Commonwealth of Massachusetts

PRESENTED BY:

David T. Vieira

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 the registration of irrigation contractors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>2/18/2021</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/26/2021</i>

HOUSE No. 468

By Mr. Vieira of Falmouth, a petition (accompanied by bill, House, No. 468) of David T. Vieira and Paul A. Schmid, III for legislation to establish a board of registration of irrigation contractors. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the registration of irrigation contractors.

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 2004 Official Editions, is hereby
2 amended in Chapter 13 by adding at the end thereof the following new sections: -

3 Section 98. There shall be a board of registration of irrigation contractors, in this section
4 and in sections ninety-nine and one hundred called the board, consisting of seven members to be
5 appointed by the governor, citizens of the commonwealth, four of whom shall have been
6 engaged in the irrigation contracting industry for a period of five years or more prior to their
7 appointment and who hold a certified irrigation contractor or certified irrigation designer
8 designation in good standing with the Irrigation Association, two of whom shall have experience
9 as manufacturer or distributor of irrigation equipment, systems or components thereof, , and one
10 of whom shall be a representative of the public who is a professional engineer or landscape
11 architect, subject to the provisions of section nine B. As the term of office of a member of the
12 board expires, his successor shall be appointed in like manner for a term of four years. Any

13 vacancy in the membership occurring other than by expiration of a term shall be filled in the
14 same manner as the original appointment, but for the expired term only. Each member shall
15 continue to serve until the qualification of his successor. The governor may also fill any vacancy
16 in the board for the unexpired portion of the term.

17 Section 99. The board shall hold at least two regular meetings each year and may hold
18 such special meetings as it may determine. At the first regular meeting each year, the board shall
19 organize and choose a chairman who shall be a member of the board and a secretary who may,
20 but need not, be a member of the board. At all meetings of the board a quorum shall consist of
21 four members.

22 Section 100. The members of the board shall serve without compensation, except that
23 there shall be paid by the commonwealth to the secretary, whether a member of the board or not,
24 a salary of five hundred dollars. Each member shall receive from the commonwealth the
25 necessary travel and other expenses actually incurred by him in the performance of his duties.
26 The board may appoint such clerks as may be necessary; provided that the salary of the secretary
27 and expenses of the members of the board and its employees, and the expenses of the board,
28 shall not be more than the receipts for registration and from other sources that have been
29 received by the state treasurer from the board.

30

31 SECTION 2. The General Laws, as appearing in the 2004 Official Editions, is hereby
32 amended in Chapter 112 by adding at the end thereof the following new sections: -

33 Section __. Definitions

34 The following words as used in this section and sections two hundred and twenty-eight to
35 two hundred and thirty-six, inclusive, unless the context otherwise requires, shall have the
36 following meanings:

37 “Board”, the Board of Registration of Irrigation Contractors.

38 “Business permit”, a business that holds a permit as approved by the board
39 entitling it to be called by the title “irrigation contracting business” and which employs at least
40 one irrigation contractor, certified under the provisions of sections two hundred and twenty-eight
41 to two hundred and thirty-six, inclusive.

42 “Certified irrigation contractor”, an individual who is certified as such with the
43 Irrigation Association.

44 “Division”, the Massachusetts Division of Insurance.

45 “Irrigation Association”, professional trade organization that establishes and
46 maintains industry standards and guidelines for certification, education and professional
47 development and promotes modern water management skills and techniques for irrigated
48 agriculture, turf, landscape, and golf.

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

51 “Irrigation contractor”, a person who holds a certificate entitling him to be called by the
52 title “irrigation contractor” in the commonwealth under the authority of section two hundred and
53 twenty-seven.

54 “Irrigation system”, any assemblage of components, materials or special equipment
55 which is constructed and permanently installed predominantly underground for controlled
56 dispersion of water from any safe and suitable source, for the purpose of irrigating landscape
57 vegetation or the control of dust and erosion on landscaped areas, including integral pumping
58 systems and including required wiring within that system and connection to a public or private
59 water supply system under the terms and conditions of a contract. An irrigation system, when
60 connected to a potable water supply, shall include a connection beginning at the downstream side
61 of a professionally installed backflow prevention device as required under 248 CMR 10.00. An
62 irrigation system shall not include plumbing, or a plumbing system as defined in Chapter 142 of
63 the General Laws.

64 “Professional engineer”, a person who, by reason of his special knowledge of the
65 mathematical and physical sciences and the principles and methods of engineering analysis and
66 design acquired by professional education and practical experience, is qualified to practice
67 engineering, as attested by his registration as a professional engineer; provided, however, that
68 registration as a professional engineer shall not qualify a person to practice as an engineer
69 licensed under chapter one hundred and forty-six.

70 “Professional irrigation consultant”, an independent irrigation designer responsible for
71 the preparation of irrigations system plans and specifications, the observation of system
72 construction and recommendations for irrigation management and who derives more than eighty
73 percent of their income from professional consulting.

74

75 Section ____ . Powers and Duties of the Board of Registration of Irrigation Contractors

76 The board shall review applications for certification, register and issue certificates of
77 registration, take appropriate disciplinary action, including but not limited to the assessment of
78 penalties or the suspension or revocation of said certification, require continuing education
79 requirements, and maintain a current roster of irrigation contractors in the commonwealth.

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

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

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

89 Section _____. Certificates of registration; necessity; display

90 No person shall construct, install, repair, improve, winterize, or alter any portion of an
91 irrigation system in the commonwealth nor shall they represent themselves to be an irrigation
92 contractor or use the title irrigation contractor in the commonwealth on any advertisement, sign,
93 title, card or other device to indicate that such person is an irrigation contractor, unless such
94 person shall have secured from the board a certificate of registration as an irrigation contractor.

95 A person may construct, install, repair, improve or alter any portion of an irrigation system in the
96 commonwealth if under the direct supervision of a certified irrigation contractor.

97 Every holder of a certificate of such registration shall display it in a conspicuous
98 place in his principal office or place of employment, and on any plans specifically used in the
99 development, management, and installation of an irrigation system and on all advertisements,
100 signs, tiles, cards and vehicles.

101 No firm, partnership or corporation shall represent themselves as an irrigation contracting
102 business or use the title irrigation contracting business in the commonwealth on any
103 advertisement, sign, title, card or other device to indicate that such person is an irrigation
104 contracting business, unless such firm, partnership or corporation shall have secured from the
105 board a business permit as an irrigation contracting business or is acting under the direct
106 supervision of a certified irrigation contractor. Every holder of a business permit shall display it
107 in a conspicuous place in its principal office and on any vehicles used for such commercial
108 purposes.

109 Nothing herein shall be construed to prevent a firm, partnership or corporation from using
110 the title “irrigation contractor” or “irrigation contractors”, or similar title provided that the
111 practice of irrigation contracting by such firm, partnership or corporation shall be under the
112 professional and supervisory control of a person registered as an irrigation contractor and the
113 entity holds a valid business permit.

114 Section ____ . Qualifications of applicants for certification

115 (a) Before being examined for registration as an irrigation contractor, each applicant
116 shall submit evidence to the board that they are at least eighteen years of age and of good moral
117 character; are a citizen of the United States or have legally declared their intention of so
118 becoming; and is duly certified in good standing with the nationally recognized Irrigation

119 Association as a certified irrigation contractor. Applications shall include but not be limited to
120 the applicant's name, home address, social security number, and most recent W-2. Applicants
121 shall attest, under penalty of law, that the information provided in the application is true, accurate
122 and complete and will acknowledge that there are, or may be, significant civil and criminal
123 penalties, including fines and/or imprisonment, for knowingly submitting false, inaccurate or in-
124 complete information or statements. Said information and acknowledgements shall be completed
125 on a form provided or approved by the Board. If, at any time, the Board finds that an applicant
126 obtained a landscape irrigation contractor certificate or a business permit under false pretenses,
127 such findings shall be cause for revocation. Additional documentation may be required if the
128 Board deems it necessary to determine whether the applicant meets the above criteria.

129 Section _____. Qualifications for business permits

130 Before being examined for an original business permit or renewal of a business permit,
131 applicants are required to provide proof of liability and workers compensation policies.
132 Applicants must also provide the name of the business, address, federal tax identification
133 number. Said proof of insurance and business information shall be completed on a form provided
134 or approved by the Board and shall be issued in the name of the business permit holder. The
135 board shall be listed as the certificate holder and notified in any lapses of coverage.

136 Section _____. Examinations; rules and regulations

137 The board shall adopt rules and regulations including but not limited to the establishment
138 of an electronic registration system and shall publish appropriate announcements. Except as
139 hereinafter provided, every applicant for registration as an irrigation contractor shall be required,
140 in addition to all other requirements, to establish, by written examination through the Irrigation

141 Association, his competency to plan, construct, manage, install, and supervise the installation of
142 irrigation contracting systems.

143 Section ____ . Exemptions

144 The following shall not be required to be certified pursuant to sections two hundred and
145 twenty-eight to two hundred and thirty-six, inclusive:

146 (a) An employee working under the direct supervision of an on-site certified
147 irrigation contractor.

148 (b) A homeowner who installs an irrigation system at his or her place of
149 residence.

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

152 (d) Anyone installing an irrigation system to irrigate their own field crops, grain,
153 soybeans, hay, fruits, vegetables, Christmas trees, horticultural specialties to be offered for sale,
154 including nursery stock, ornamental shrubs, ornamental trees, flowers, and turf on turf farms.

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

158 (f) Duly certified and in good standing landscape architects and professional
159 engineers.

160 (g) Professional irrigation consultant as defined by this statute

161 Section ____ . Certificate of registration and business permit fees

162 Applicants for certificates of registration and for business permits shall pay a fee, to be
163 established bi-annually by the secretary for administration and finance pursuant to section three
164 B of chapter seven and shall be paid to the board on or before the thirty-first day of January of
165 every other year. Each initial certificate of registration issued in accordance with this act shall
166 expire on January 31 of the second calendar year following issuance. All certificates of
167 registration issued thereafter shall remain valid for a period of two years and shall expire January
168 31 of the second calendar year. A new permit issued anytime after the January 31 issuance date
169 shall remain valid until the regular January 31 date of expiration.

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

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

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

177 Fees for business permits shall be determined bi-annually by the secretary for
178 administration and finance pursuant to section three B of chapter seven and shall be paid to the
179 board. Each initial business permit issued in accordance with this act shall expire on January 31
180 of the second calendar year following issuance. All permits issued thereafter shall remain valid
181 for a period of two years and shall expire January 31 of the second calendar year. A new permit

182 issued anytime after the January 31 issuance date shall remain valid until the regular January 31
183 date of expiration.

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

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

188 (a) that the holder of such certificate of registration or business permit is in
189 violation of any provision of sections two hundred and twenty-seven to two hundred and thirty-
190 five, inclusive, or of any rule or regulation promulgated by the board.

191 (b) that such certificate of registration or business permit was obtained by fraud or
192 misrepresentation.

193 (c) that any money or thing of value, except fees prescribed or authorized by said
194 sections, was paid or received to secure the issuance of such certificate of registration or business
195 permit.

196 (d) that the holder of such certificate of registration or business permit has been
197 guilty of a felony.

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

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

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

208 Section _____. Unlawful conduct; penalties

209 It shall be unlawful for any person to:

210 (a) hold himself as an irrigation contractor unless he is registered under the
211 provisions of sections two hundred and twenty-seven to two hundred and thirty-five, inclusive.

212 (b) present as his own the certificate of registration of another.

213 (c) give false or forged evidence to the board of registration or any member
214 thereof in obtaining a certificate.

215 (d) falsely impersonate any other registrant of like or different name.

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

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

218 A fine of not less than fifteen hundred dollars nor more than twenty-five hundred dollars,
219 or by imprisonment for not more than one year, or both shall be set for a first offense. A fine of
220 not less than twenty-five hundred dollars nor more than five thousand dollars, or by

221 imprisonment for not more than two year, or both shall be set for each and every subsequent
222 offense. Violations shall be considered unfair and deceptive acts and subject to the provisions of
223 Chapter 93A of the General Laws.