

HOUSE No. 399

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>1/17/2023</i>
<i>Steven George Xiarhos</i>	<i>5th Barnstable</i>	<i>3/8/2023</i>

HOUSE No. 399

By Representative Vieira of Falmouth, a petition (accompanied by bill, House, No. 399) of David T. Vieira and Steven George Xiarhos 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-Third General Court
(2023-2024)**

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. Chapter 13 of the General Laws, as appearing in the 2018 Official Editions,
2 is hereby amended by adding at the end thereof the following new section:-

3 Section 110. (a) There shall be a board of registration of irrigation contractors, referred to
4 hereafter as the board, consisting of seven members to be appointed by the governor, all
5 residents of the commonwealth, four of whom shall have been engaged in the irrigation
6 contracting industry for a period of not less than five years prior to their appointment, two of
7 whom shall have experience as manufacturer or distributor of irrigation equipment, systems or
8 components thereof, and one of whom shall be a representative of the public who is a
9 professional engineer or landscape architect, subject to the provisions of section 9B. As the term
10 of office of a member of the board expires, their successor shall be appointed in like manner for
11 a term of four years. Any vacancy in the membership occurring other than by expiration of a
12 term shall be filled in the same manner as the original appointment, but for the expired term

13 only. Each member shall continue to serve until the qualification of his successor. The governor
14 may also fill any vacancy in the board for the unexpired portion of the term.

15 (b) The board shall hold at least two regular meetings each year and may hold such
16 special meetings as it may determine. At the first regular meeting each year, the board shall
17 organize and choose a chair who shall be a member of the board and a secretary who may, but
18 need not, be a member of the board. At all meetings of the board a quorum shall consist of four
19 members.

20 (c) The members of the board shall serve without compensation, except that each
21 member shall receive from the commonwealth the necessary travel and other expenses actually
22 incurred by him in the performance of his duties.

23 SECTION 2. Chapter 112 of the General Laws, as so appearing, is hereby amended by
24 adding at the end thereof the following ten new sections:-

25 Section 290. The following words as used in this section and sections 291 to 299,
26 inclusive, shall, unless the context otherwise requires, have the following meanings:

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

28 “Business permit”, a business that holds a permit as approved by the board entitling it to
29 be called by the title “irrigation contracting business” and which employs at least one irrigation
30 contractor, certified under the provisions of sections 291 to 299, inclusive.

31 “Certified irrigation contractor”, an individual who is certified as such with the Irrigation
32 Association, as approved by the board.“

33 “Irrigation Association”, the professional trade organization that establishes and
34 maintains industry standards and guidelines for certification, education and professional
35 development and promotes modern water management skills and techniques for irrigated
36 agriculture, turf, landscape, and golf.

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

39 “Irrigation contractor”, a person who holds a certificate entitling him to be called by the
40 title “irrigation contractor” in the commonwealth under the authority of the board.

41 “Irrigation system”, any assemblage of components, materials or special equipment
42 which is constructed and permanently installed predominantly underground for controlled
43 dispersion of water from any safe and suitable source, for the purpose of irrigating landscape
44 vegetation or the control of dust and erosion on landscaped areas, including integral pumping
45 systems and including required wiring within that system and connection to a public or private
46 water supply system under the terms and conditions of a contract. An irrigation system, when
47 connected to a potable water supply, shall include a connection beginning at the downstream side
48 of a professionally installed backflow prevention device as required under 248 CMR 10.00. An
49 irrigation system shall not include plumbing, or a plumbing system as defined in chapter 142.

50 “Professional engineer”, a person who, by reason of his special knowledge of the
51 mathematical and physical sciences and the principles and methods of engineering analysis and
52 design acquired by professional education and practical experience, is qualified to practice
53 engineering, as attested by his registration as a professional engineer; provided, however, that

54 registration as a professional engineer shall not qualify a person to practice as an engineer
55 licensed under chapter 146.

56 “Professional irrigation consultant”, an independent irrigation designer responsible for
57 the preparation of irrigations system plans and specifications, the observation of system
58 construction and recommendations for irrigation management and who derives more than 80 per
59 cent of their income from professional consulting.

60 Section 291. The board shall review applications for certification, register and issue
61 certificates of registration, take appropriate disciplinary action, including but not limited to the
62 assessment of penalties or the suspension or revocation of said certification, require continuing
63 education requirements, and maintain a current roster of irrigation contractors in the
64 commonwealth.

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

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

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

74 Section 292. No person shall construct, install, repair, improve, winterize, or alter any
75 portion of an irrigation system in the commonwealth nor shall they represent themselves to be an
76 irrigation contractor or use the title irrigation contractor in the commonwealth on any
77 advertisement, sign, title, card or other device to indicate that such person is an irrigation
78 contractor, unless such person shall have secured from the board a certificate of registration as an
79 irrigation contractor. A person may construct, install, repair, improve or alter any portion of an
80 irrigation system in the commonwealth if under the direct supervision of an irrigation contractor.

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

85 No firm, partnership or corporation shall represent themselves as an irrigation contracting
86 business or use the title irrigation contracting business in the commonwealth on any
87 advertisement, sign, title, card or other device to indicate that such person is an irrigation
88 contracting business, unless such firm, partnership or corporation shall have secured from the
89 board a business permit as an irrigation contracting business or is acting under the direct
90 supervision of an irrigation contractor. Every holder of a business permit shall display it in a
91 conspicuous place in its principal office and on any vehicles used for such commercial purposes.

92 Nothing herein shall be construed to prevent a firm, partnership, or corporation from
93 using the title “irrigation contractor” or “irrigation contractors”, or similar title provided that the
94 practice of irrigation contracting by such firm, partnership or corporation shall be under the

95 professional and supervisory control of a person registered as an irrigation contractor and the
96 entity holds a valid business permit.

97 Section 293. Before being examined for registration as an irrigation contractor, each
98 applicant shall submit evidence to the board that they are at least 18 years of age and of good
99 moral character; and are a citizen of the United States or have legally declared their intention of
100 so becoming. The board may also take into consideration for expedited review whether an
101 applicant is duly certified in good standing with the nationally recognized Irrigation Association
102 as a certified irrigation contractor. Applications shall include but not be limited to the applicant's
103 name, home address, social security number, and most recent W-2. Applicants shall attest, under
104 penalty of law, that the information provided in the application is true, accurate and complete
105 and will acknowledge that there are, or may be, significant civil and criminal penalties, including
106 fines or imprisonment, for knowingly submitting false, inaccurate or in- complete information or
107 statements. Said information and acknowledgements shall be completed on a form provided or
108 approved by the Board. If, at any time, the Board finds that an applicant obtained a landscape
109 irrigation contractor certificate or a business permit under false pretenses, such findings shall be
110 cause for revocation. Additional documentation may be required if the Board deems it necessary
111 to determine whether the applicant meets the above criteria.

112 Section 294. Before being examined for an original business permit or renewal of a
113 business permit, applicants are required to provide proof of liability and workers compensation
114 policies. Applicants must also provide the name of the business, address, federal tax
115 identification number. Said proof of insurance and business information shall be completed on a
116 form provided or approved by the Board and shall be issued in the name of the business permit
117 holder. The board shall be listed as the certificate holder and notified in any lapses of coverage.

118 Section 295. The board shall adopt rules and regulations including but not limited to the
119 establishment of an electronic registration system and shall publish appropriate announcements.
120 The board may require every applicant for registration as an irrigation contractor to establish, by
121 written examination through the Irrigation Association, his competency to plan, construct,
122 manage, install, and supervise the installation of irrigation contracting systems.

123 Section 296. The following shall not be required to be certified pursuant to sections 291
124 to 299, inclusive:

125 (a) An employee working under the direct supervision of an on-site irrigation contractor;

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

127 (c) Anyone in the employ of a golf course for the purpose of maintaining or repairing an
128 existing irrigation system or the replacement of an existing irrigation system;

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

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

135 (f) Duly certified and in good standing landscape architects and professional engineers;

136 and

137 (g) Professional irrigation consultant as defined by this statute.

138 Section 297. Applicants for certificates of registration and for business permits shall pay
139 a fee, to be established bi-annually by the secretary for administration and finance pursuant to
140 section 3B of chapter 7 and shall be paid to the board on or before the 31 day of January of every
141 other year. Each initial certificate of registration issued in accordance with this act shall expire
142 on January 31 of the second calendar year following issuance. All certificates of registration
143 issued thereafter shall remain valid for a period of two years and shall expire January 31 of the
144 second calendar year. A new permit issued anytime after the January 31 issuance date shall
145 remain valid until the regular January 31 date of expiration.

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

148 Failure to renew certificate of registration within 60 days after notification by the board
149 that said certificate has expired, shall require such applicant to register anew and may require re-
150 examination, subject to the discretion of the board.

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

153 Fees for business permits shall be determined bi-annually by the secretary for
154 administration and finance pursuant to section 3B of chapter 7 and shall be paid to the board.
155 Each initial business permit issued in accordance with this act shall expire on January 31 of the
156 second calendar year following issuance. All permits issued thereafter shall remain valid for a
157 period of two years and shall expire January 31 of the second calendar year. A new permit
158 issued anytime after the January 31 issuance date shall remain valid until the regular January 31
159 date of expiration.

160 Section 298. The board may refuse to issue, renew, suspend, or revoke the certificate of
161 registration or business permit upon proof satisfactory to the board:

162 (a) that the holder of such certificate of registration or business permit is in violation of
163 any provision of sections 291 to 299, inclusive, or of any rule or regulation promulgated by the
164 board;

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

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

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

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

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

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

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

182 Section 299. It shall be unlawful for any person to:

183 (a) hold himself as an irrigation contractor unless he is registered under the provisions of
184 sections 291 to 299, inclusive;

185 (b) present as his own the certificate of registration of another;

186 (c) give false or forged evidence to the board of registration or any member thereof in
187 obtaining a certificate;

188 (d) falsely impersonate any other registrant of like or different name;

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

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

191 A fine of not less than 1,500 dollars nor more than 2,500 dollars, or by imprisonment for
192 not more than one year, or both shall be set for a first offense. A fine of not less than 2,500
193 dollars nor more than 5,000 dollars, or by imprisonment for not more than two year, or both shall
194 be set for each and every subsequent offense. Violations shall be considered unfair and
195 deceptive acts and subject to the provisions of chapter 93A.