By G. Hill H.B. No. 644

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain irrigators; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Person" means a natural person, corporation, organization, partnership, association, or other legal entity.

(2) "Board" means the Texas Board of Irrigators.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Executive secretary" means the executive secretary of the board.

(5) "Commission" means the Texas Water Commission.

(6) "Irrigation system" means an assembly of component parts permanently installed with and for the controlled distribution and conservation of water for the purpose of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control.

(7) "Licensed irrigator" means a person, corporation, partnership, association, or other legal entity licensed under this Act, who maintains a regular place of business, and who, by himself or herself, or through a person in his or her employ, sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system or yard sprinkler system including

connections in and to a private or public potable water supply or water supply system.

SECTION 2. EXEMPTIONS. This Act does not apply to:

(1) a registered professional engineer or architect other than a landscape architect if his or her acts are incidental to the pursuit of his or her profession;

(2) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;

(3) irrigation or yard sprinkler work done by a maintenance person incidental to and on premises owned by the business in which he or she is regularly employed or engaged, and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(4) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state;

(6) a temporary or portable water device such as a garden hose, hose sprinkler, soaker hose, or agricultural irrigation system;

(7) a portable or solid set agricultural irrigation system; or

(8) irrigation or yard sprinkler work done by an

agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land owned by himself or herself.

SECTION 3. TEXAS BOARD OF IRRIGATORS. (a) There is created a Texas Board of Irrigators composed of six members, each of whom shall be a citizen of the United States and a resident of this state.

(b) Each member of the board and his or her successor shall be appointed by the governor with the advice and consent of the senate. Two members shall be members of the public not licensed under this Act, and four members shall be licensed irrigators who have been actively engaged in the practice of irrigation of the type licensed under this Act for a period of at least eight years.

(c) Except for the initial appointees to the board, the members of the board hold office for terms of six years, with the terms of two members expiring on January 31 of each odd-numbered year. In making initial appointments, the governor shall designate two members to serve terms expiring January 31, 1981, two members to serve terms expiring January 31, 1983, and two members to serve terms expiring January 31, 1985.

(d) The board shall select one of its members as chairman. The chairman shall serve for the term provided by the rules of the board and may be removed for cause, but his or her removal does not disqualify him or her from continuing as a member of the board.

(e) Four members of the board constitute a quorum for transaction of business.

(f) The initial board shall hold its first meeting within 30

days after all members have qualified, and the board shall hold at least two regular meetings each year at a time and place designated by the chairman. The board may hold special meetings at times and places considered necessary by a majority of the members of the board.

(g) Each member shall receive as compensation for his or her services $25 a day for each day he or she is actively engaged in official duties.

SECTION 4. EXECUTIVE SECRETARY; EMPLOYEES. (a) The executive director shall employ an executive secretary approved by the board to perform the duties and functions provided by this Act and as directed by the board.

(b) The executive director shall provide necessary personnel to assist the executive secretary and the board in performing their duties and functions under this Act.

(c) The commission shall hear all contested cases as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), arising under this Act.

SECTION 5. BOARD FINANCES. (a) Money paid to the board under this Act shall be deposited in the state treasury in a special fund known as the Texas Board of Irrigators fund.

(b) Expenses under this Act shall be paid from the Texas Board of Irrigators fund as provided in the General Appropriations Act.

(c) No expense under this Act may ever be paid from general revenues of this state.

(d) Before August 31 of each year, the board shall make a written report to the governor accounting for all receipts and disbursements under this Act.

(e) On the effective date of this Act, 50 percent of the money credited to the Texas State Board of Landscape Architects and Irrigators fund shall be transferred by the state treasurer to the Texas Board of Irrigators fund.

SECTION 6. RULES. (a) The board shall adopt rules consistent with this Act to govern the conduct of its business and proceedings, and shall adopt standards governing revocation of certificates of registration and connections to public or private water supplies by a licensed irrigator.

(b) The board does not have authority to amend or enlarge by rule on any provision of this Act, to change the meaning of this Act by rule in any manner, to adopt a rule that is contrary to the underlying and fundamental purposes of this Act, or to make a rule that is unreasonable, arbitrary, capricious, illegal, or unnecessary.

SECTION 7. REGISTRATION REQUIREMENT. (a) No person may act as a licensed irrigator unless he or she has a valid certificate of registration under this Act.

(b) The board shall issue certificates of registration to persons of good moral character who have shown themselves fit, competent, and qualified to act as licensed irrigators by passing a uniform, reasonable examination.

(c) The board shall provide in its rules for the preparation, administration, and grading of examinations to acquire

1 certificates of registration under this Act. The fee for taking
2 the examination is $50.
3 (d) A person holding a certificate of registration under
4 this Act shall not be required to comply with any other licensing
5 requirements of other state agencies to perform connections to
6 private or public raw or potable water supply systems.
7 SECTION 8. RECIPROCITY. (a) The board may certify for
8 registration without examination an applicant who is registered as
9 a licensed irrigator in another state or country that has
10 requirements for registration that are at least substantially
11 equivalent to the requirements of this state and that extends the
12 same privilege of reciprocity to licensed irrigators registered in
13 this state.
14 (b) The application for registration under this section
15 shall be accompanied by a fee of not to exceed $50 as determined by
16 the board.
17 SECTION 9. RENEWAL. (a) Certificates of registration
18 expire on August 31 of each year.
19 (b) The executive secretary shall notify every person
20 registered under this Act of the date of expiration of his or her
21 certificate and the amount of the fee that is required for renewal
22 for one year. The notice shall be mailed at least two months in
23 advance of the date of expiration of the certificate.
24 (c) A person may renew his or her certificate at any time
25 during the months of July and August of each year by payment of the
26 fee adopted by the board in an amount of not more than $100.
27 (d) Failure of a registrant to renew his or her certificate

by August 31 does not deprive the registrant of the right to renewal, but the fee paid for renewal of a certificate after the August 31 expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If the registrant fails to renew within one year after the date of expiration of the registration certificate, the registrant must reapply for registration and must qualify under Section 7 of this Act to act as a licensed irrigator.

(e) Renewal certificates carry the same registration number as the original certificates.

(f) By rule, the board may adopt a system under which certificates of registration may expire on various dates during the year. Renewals may be made at any time during the two-month period before the designated expiration date, and renewal fees paid after the expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If a registrant fails to renew within one year after the expiration date of the registration, the registrant must reapply for registration and must qualify under Section 7 of this Act to act as a licensed irrigator. For the year in which the expiration date is changed, registration fees payable on August 31 shall be prorated on a monthly basis so that each registrant will pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid, and on renewal of the registration on the new expiration date, the total of the registration fee is payable.

SECTION 10. REVOCATION. (a) The commission may revoke a certificate of registration of any registrant who is charged by the

board with and found guilty by the commission of:

(1) violations of this Act or rules adopted under this Act;

(2) fraud or deceit in obtaining a certificate of registration; or

(3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator.

(b) The commission shall hear charges under Subsection (a) of this section subject to standards adopted by the board in its rules.

(c) In determining the truth of allegations against a registrant, the board shall proceed on sworn information furnished to it by any reliable resident of this state. The information shall be in writing and shall be duly verified by the person familiar with the facts alleged. Three copies of the written allegations shall be filed with the executive secretary.

(d) On receipt of written allegations, the board, if it considers the information sufficient to support further action, shall issue an order requesting the executive director to set the charges for hearing by the commission at a specific time and place.

(e) The commission may compel the attendance of witnesses before it as in civil cases in the district court by subpoena issued over the signature of the executive director and the seal of the commission.

SECTION 11. PENALTY; INJUNCTION. (a) A person who represents himself or herself as a licensed irrigator in this state without being registered or exempted under this Act, a person presenting or attempting to use as his or her own the certificate

of registration or the seal of another person who is a licensed irrigator, a person who gives false or forged evidence of any kind to the board or to any member of the board in obtaining or assisting in obtaining for another a certificate of registration, or a person who violates a provision of this Act or a rule adopted under this Act, shall be fined not less than $100 nor more than $500, or be confined in the county jail for a period not to exceed three months, or both. Each day a violation of this subsection occurs constitutes a separate offense.

(b) On request of the board, the executive director shall request the attorney general to seek injunctive relief to prevent any of the acts of violation listed in Subsection (a) of this section.

SECTION 12. ENFORCEMENT OF ACT. The executive director with the assistance of the attorney general shall enforce this Act and the rules adopted by the board.

SECTION 13. LOCAL REGULATORY AUTHORITY. A regulatory agency of any city, town, county, special purpose district, or other political subdivision of the state may require landscape irrigators to comply with any reasonable inspection requirements and pay any reasonable fees imposed by that local entity relating to work performed by licensed irrigators within its jurisdiction.

SECTION 14. CERTIFICATION OF CERTAIN PERSONS. A person who holds a license as a landscape irrigator under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 249c, Vernon's Texas Civil Statutes), on the effective date of this Act is entitled to be certified as a licensed irrigator without

meeting the requirements of Section 7 of this Act.

SECTION 15. SUNSET PROVISION. The board is subject to the Texas Sunset Act, and unless continued in existence as provided by that Act, the board is abolished and this Act expires effective September 1, 1991.

SECTION 16. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

H. B. No. 644 By Hill of Travis

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relating to the regulation of certain irrigators; and providing penalties.

JAN 25 1979 1. Filed with the Chief Clerk.

JAN 29 1979 2. Read first time and Referred to Committee on Government Organizations

_____ 3. Reported favorably (as amended) / unfavorably (as substituted) and sent to Printer at ____:____ M. (time)

_____ 4. Printed and distributed at ____:____ M. (time)

_____ 5. Sent to Committee on Calendars at ____:____ M. (time)

_____ 6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of ____ yeas, ____ nays, ____ present, not voting).

_____ 7. Motion to reconsider and table the vote by which H. B. ____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of ____ yeas, ____ nays, and ____ present, not voting).

_____ 8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ____ yeas, ____ nays, and ____ present, not voting.

_____ 9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of ____ yeas, ____ nays, ____ present, not voting).

_____ 10. Caption ordered amended to conform to body of bill.

_____ 11. Motion to reconsider and table the vote by which H. B. ____ was finally passed prevailed (failed) by a (Non-Record) (Record Vote of ____ yeas, ____ nays, and ____ present, not voting).

_____ 12. Ordered Engrossed at ____:____ M. (time)

_____ 13. Engrossed.

_____ 14. Returned to Chief Clerk at ____:____ M. (time)

_____ 15. Sent to Senate.

_____
Chief Clerk of the House

_____ 16. Received from the House _____

_____ 17. Read, referred to Committee on _____

_____ 18. Reported favorably _____

_____ 19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

_____ 20. Ordered not printed.

_____ 21. Regular order of business suspended by (a viva voce vote.) (____ yeas, ____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas, _____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

_____
Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments).

_____ 29. House (Concurred) (Refused to Concur) in Senate Amendments by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____ : _____ M.
(time)