

Questions and Answers on Senate No. 2302 (As of March 3, 2009)

Thank you for all the questions concerning the new landscape licensure bill (S-2302), and thank you for all your support. Below are some of the most frequently asked questions concerning the licensure of landscape professionals and registration of professional landscape businesses.

Q. Will this bill be law this spring?

A. No. The process will probably take two, three, or even four years before it becomes law. And, it might not even become a law. We'll have to wait and see how the Legislature feels about it. If the Legislature passes it in both houses, it is then sent to the Governor. The bill becomes law upon the Governor's signature or after 45 days if no action is taken. If vetoed, a bill may become law if the Legislature overrides the veto by a two-thirds vote (27 in the Senate, 54 in the Assembly).

Q. If and/or after the bill becomes a law, how long will it be before it is actually in effect?

A. Rules and regulations will have to be written to effectuate the law. This process may take another one to two years after the bill becomes law. After the rules and regulations are adopted, there is a 730 day grandfathering period. So, in reality, if this bill passes and becomes law, it could be five, six or even seven years from actually being enforced.

Q. Are there provisions in the bill to supersede the Home Improvement Contractors Act?

A. Yes. Section 5 of P.L.2004, c.16 (C.56:8-140) is amended to read as follows:

5. The provisions of this act shall not apply to:
 - a. Any person required to register pursuant to "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.);
 - b. Any person performing a home improvement upon a residential or non-commercial property he owns, or that is owned by a member of his family, a bona fide charity, or other non-profit organization;
 - c. Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of his profession;
 - d. Any person who is employed by a community association or cooperative corporation;
 - e. Any public utility as defined under R.S.48:2-13;
 - f. Any person licensed under the provisions of section 16 of P.L.1960, c.41 (C.17:16C-77); [and]

g. Any home improvement retailer with a net worth of more than \$50,000,000, or employee of that retailer; and

h. Any person licensed as a landscape professional under the provisions of P.L. c. (C.) (pending before the Legislature as this bill).
(P.L.2004, c.16, s.5)

Q. Will this bill supersede municipal ordinance or regulations that provide for the licensing, certification or registration of landscape professionals or the registration of professional landscape businesses.

A. As written, Yes.

Q. How long did it take to write the bill?

A. Four years.

Q. How many people worked on it?

A. 15

Q. How will it be enforced?

A. In several ways. No municipality shall issue a construction permit for landscaping to any person who is not licensed as a landscape professional or registered as a professional landscape business by the board pursuant to the provisions of the act.

In addition to suspension or revocation of a license or registration, the board may levy a fine, not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for a second or subsequent violation of the act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. In addition to any other penalty provided by law, a person who knowingly violates any of the provisions of the act is guilty of a crime of the fourth degree. For the purposes of this subsection, each violation shall constitute a separate offense.

Q. Will the police be able to enforce this act?

A. Ready for this, as we investigated this question. We found out that the police currently have no authority to stop a vehicle for not displaying, or improperly displaying, license or registration numbers on their vehicles such as the Home Improvement Contractors Act license requirements, NJDEP license requirements, electrician license requirements, and plumber license requirements, among others. So, we approached the NJ State Association of Chiefs of Police, and have garnered their support for writing a new motor vehicle law or amending and existing law to allow police officers to stop vehicles for not displaying, or improperly displaying, license or registration numbers pursuant to the landscape licensure act, among others. The process continues.

Q. Why are you pursuing the enforcement issue?

A. Believe it or not, all of the landscape folks that we have spoken to stressed that strong enforcement is necessary.

Q. How will this license protect consumers?

A. Every landscaping contract for a purchase price in excess of \$500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to: A copy of the certificate of commercial general liability insurance required of a professional landscape business pursuant to section 14 of this act and the telephone number of the insurance company issuing the certificate; and the total price or other consideration to be paid by the consumer, including the finance charges. And that the landscaping contract may be cancelled by a consumer for any reason at any time before midnight of the third business day after the consumer receives a copy of it. And that all moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation, but shall not include moneys for materials purchased and delivered to the job site prior to the cancellation, to name a few.

Q. What is a landscaper, landscape contractor or landscape professional?

A. Currently there is no official definition in New Jersey.

Q. Why on earth would you want to license landscapers?

A. Landscaping adds real value to property in New Jersey. An attractive, healthy landscape enriches the community, and enhances the quality of life for all in New Jersey. It also reflects positively on the people living and working in the State. A well-maintained and developed property is important to providing a safe, high-quality play area for children and pets. A properly developed and maintained landscape also contributes in a positive way to overall air and water quality. We also want to protect the public from uneducated, uninsured and unscrupulous contractors and in turn raise the public's perception and opinion of the landscape industry as a true profession through education.

Q. Does this bill create “another layer of government oversight” of the industry?

A. No, it in fact, refines the current oversight regulations and establishes the landscape industry as a true profession.

Q. Does this bill affect everyone performing landscape related activities in NJ?

A. No, the bill pertains to only those individual professionals or companies that advertise or offer their services to the public. (For example: all state, county & municipal employees involved in grounds maintenance would not be subject to the law because they are not offering their services for hire to the general public). Learn more in section 21.

Q. Are out-of- state contractors required to obtain a landscape license to work in New Jersey?

A. Yes

Q. Is this an annual registration?

A. No. The bill stipulates that every professional landscape business shall register biennially with the board as a course of doing business in this State.

Q. Once the bill is passed into law, how will people find out about it?

A. The board shall establish and undertake a public information campaign to educate and inform landscape professionals and the consumers of this State of the provisions of the act. The public information campaign shall include, but not be limited to, newsprint, radio, television, and the preparation, printing and distribution of booklets, pamphlets or other written pertinent information.

Q. Why will members of the board be compensated?

A. If a landscape professional is giving up their time to fulfill the position and duties required by them, it is only fair that they be compensated for their time.

Q. Is there a grandfathering period?

A. Yes. For a period of 730 days from the date regulations are promulgated pursuant to the provisions of the act, any individual of good moral character who was residing in this State on the effective date of this act shall qualify as a licensed landscape professional, upon application for licensure and payment of the appropriate fee, if the individual:

- a. possesses an associate's degree, in a related field, as determined by the board, from an accredited institution and has completed not less than three years of full-time working experience in landscaping or gardening; or
- b. possesses a bachelor's degree, in a related field, as determined by the board, from an accredited institution and has completed not less than two years of full-time working experience in landscaping or gardening after receiving the degree; or
- c. possesses one of the following certifications: certified nursery landscape professional or certified landscape technician; and has completed not less than four years

of full-time working experience in landscaping or gardening after receiving the certificate; or

d. possesses a Master Gardener certificate from Rutgers, The State University of New Jersey and has completed not less than four years of full-time working experience in landscaping or gardening; or

e. has a total of at least 10 years of full-time diversified professional experience in landscaping of a grade and character acceptable to the board, and has completed on or before the effective date of this act not less than 18 hours of classroom instruction from an accredited institution in a curriculum consisting of a course or program of study, which shall include, but not be limited to, standards, specifications and professionalism in landscape operations, legal standards, plant identification, turf management, principles of pruning, and landscape management.

Q. Will sections of this bill replace the current NJDEP pesticide license?

A. No. But it will help educate the licensed professional on Integrated Pest Management (IPM) methods. IPM is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. Basically, this practice can help reduce the need for chemicals.

Q. What does “good moral character” mean?

A. Good moral character is a legal concept in United States law that details requirements for consideration for certain benefits or positions. It is chiefly used in immigration law but it can also be a requirement for employment positions. While not necessarily a set of character qualities it describes behaviors that an applicant could not have been involved in. A person must be of "good moral character" in order to gain US citizenship. It is related to the concept of moral turpitude.

The United States Citizenship and Immigration Services (USCIS) describes "good moral character" as an absence of involvement in the following activities:

- Being convicted of murder
- Being convicted of an aggravated felony, which includes:
 - Murder, rape, or sexual abuse of a minor
 - Illicit trafficking in controlled substances
 - Firearms, destructive devices, and explosive materials offenses
 - Money laundering
 - Crimes of violence for which the term of imprisonment is at least one year
 - Theft and burglary offenses for which the term of imprisonment is at least one year
 - Crimes involving the demand for or receipt of ransom
 - Crimes involving child pornography

- Crimes involving a violation of the Racketeer Influenced Corrupt Organizations(RICO) Act
- A second or subsequent gambling offense for which a one-year or greater term of imprisonment may be imposed
- Prostitution “managing” and transporting offenses
- Crimes against the government
- Offenses that jeopardize national security
- Offenses that involve fraud or deceit in which the victims’ aggregate losses exceed \$10,000
- Tax evasion involving a government loss in excess of \$10,000
- Alien smuggling, except for first offenses involving attempts to enable entry by a relative of the accused
- Certain offenses committed by aliens who were previously deported for having committed a crime
- Passport fraud offenses with a term of imprisonment of one year or greater, except for first offenses involving attempts to enable entry by a relative of the accused
- Failure to appear to serve a sentence for which the underlying offense is punishable by imprisonment for five or more years
- Offenses involving commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers with a term of imprisonment of at least one year
- Offenses involving obstruction of justice, perjury, subornation of perjury, and witness tampering with a term of imprisonment of at least one year
- Failure to appear in court pursuant to court order to answer to a felony charge for which a sentence of two or more years’ imprisonment may be imposed
- OR any of the following during the five years preceding application:
 - Committing and being convicted of one or more crimes involving “moral turpitude”
 - Committing and being convicted of two or more offenses with a total sentence of five or more years
 - Being confined to a penal institution during the statutory period (either the preceding three or five years, depending on the circumstances, or one year for Armed Forces expedited cases) for an aggregate of 180 days or more
 - Committing and being convicted of two or more gambling offenses
 - Earning your principal income from gambling.
 - Being involved in prostitution or commercialized vice
 - Being involved in smuggling illegal aliens into the United States
 - Being a habitual drunkard
 - Practicing polygamy
 - Willfully failing or refusing to support dependents
 - Giving false testimony under oath in order to receive benefits under the Immigration and Nationality Act

Additionally several other activities disqualify a person from having "good moral character":

- failing to register for the Selective Service program
- providing false information in documents
- falsely claiming US citizenship

Q. Why will people who install paver driveways, walkways and patios need to be licensed?

A. Because interlocking concrete pavers should last a minimum of 30 years when installed correctly. A set of industry guidelines needs to be followed so consumers are assured that the job is done right. For example: the excavated area should be a minimum of 6" wider than the actual paved area. The extra width will help ensure stability of the base at the edges, and provide space for the required edge restraints. The landscape professionals will be taught to grade the paver installation for drainage by sloping the paved area away from the house at a minimum of 2%. And the landscape professional will know to compact the base in 3-inch layers using a mechanical plate compactor. They will also know for the best results to work the compactor in a circular motion and go over all areas at least twice. And if the base is dry, they will know to moisten it with a garden hose (but not to saturate it) before compaction. Just to name just a few reasons.

Q. Why is tree pruning mentioned in the bill?

A. Pursuant to section 21.(d) of bill numbers A-2872 and S-2503. The provisions of this act shall not apply to: Landscape construction activities, including those performed by, or under the direction of, a landscape architect, or ground based landscape maintenance activities such as pruning, fertilization, insect and disease control, planting, transplanting and all other forms of ground based landscape maintenance, in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with any pesticide regulations promulgated by the Department of Environmental Protection. For the purposes of this subsection, ground based landscape maintenance means operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over 6 inch D.B.H.

Q. Why all the educational requirements?

A. The customized continuing education requirements alone will encourage licensed landscape professionals to cultivate additional knowledge and stay up-to-date on new industry developments.

A well-educated licensed landscape professional will also be able to choose plants that can survive on normal rainfall in the Garden State or that require minimal irrigation.

Existing native-plant communities are an example of the “right plant in the right place.” They will be able to “plant it smart,” by analyzing the plants: mature size (height and width); sun and shade requirements; soil needs; salt and cold tolerances and climatic conditions. For instance, think of a tree or a shrub you plan to purchase as a lifetime investment. How well your tree and shrub (your investment) grows depends on the type of plant and location selected, the care provided when it is planted, and follow-up care it receives after planting.

Licensed landscape professionals will know that before installing plant material in a hole, they will need to check that the hole has been dug to the proper depth, and no more. They will also know that the majority of the roots on the newly planted tree will develop in the top 12 inches of soil, if the tree is planted too deeply, new roots will have difficulty developing because of a lack of oxygen. They will be taught that it is better to plant the tree a little high, 2 to 3 inches above the base of the trunk flare (where the roots spread at the base of the tree), than to plant it at or below the original growing level (this planting level will allow for some settling). Licensed landscape professionals will also know that to avoid damage when setting a plant in a hole that they always need to lift it by the root ball and never by the trunk.

Licensed landscape professionals will also know that a tree-canopied neighborhood is cooler in the summer and winter winds are cut in half. When summer temperatures are cooler, fewer air pollutants form. Thus, trees create more comfortable and cleaner places for people to live.

According to the United States Department of Agriculture Natural Resources Conservation Service, properly placed plant material can:

Cut soil erosion

Rows of trees break the wind on flatter lands and healthy forests protect soil from water erosion on hillsides;

Improve air & water quality

A forest floor of leaves and decaying wood acts as a giant sponge by absorbing, holding and filtering water; one acre of trees provides fresh, clean oxygen for seven people and will clean the air polluted by eight cars operated for 12 hours.

Save energy

Recent studies show windbreaks can reduce winter fuel consumption by 10 to 30 percent. Trees also save energy by shading -- one tree has the cooling effect of five air conditioners.

Protect livestock

Trees reduce the wind and can significantly reduce animal stress. Livestock not only need less feed, but their gains are higher. Shade provided by trees is also helpful to animals on very hot summer days.

Sound barrier

Trees and windbreaks reduce noise from high-speed traffic and other sounds. Plant leaves, branches and twigs all absorb sounds of different frequencies.

Home for wildlife

Wooded areas make valuable cover, nesting and breeding areas for upland game and songbirds. In winter, when all other food is blanketed with snow, seeds and fruits of trees and shrubs provide food for nonmigratory species.

Living snow fence

In snow country, properly locating a living fence of trees and shrubs parallel to your driveway or highway helps hold snow on the fields and off the roads.

Improve crop yields

Soil particles blown by strong winds frequently damage small crops. Yields also may be lowered by the effects of hot winds. Trees protect against these hazards.

Q. Define continuing education and why it's required?

A. Within the domain of Continuing Education, professional continuing education is a specific learning activity generally characterized by the issuance of a certificate or continuing education units (CEU) for the purpose of documenting attendance at a designated seminar or course of instruction. Pursuant to the bill, the board shall establish standards for continuing education of landscape professionals, including the subject matter and content of courses of study, and the number and type of continuing education credits required of a licensed landscape professional as a condition for biennial license renewal. These requirements are intended to encourage licensed landscape professionals to expand their knowledge base and stay up-to-date on new developments. The board could require that professional continuing education be satisfied through college or university coursework, extension courses, trade shows, industry meetings, conferences and seminar attendance.

SAMPLE: Continuing education classes will teach landscape professionals how to accurately identify a lawn fungus problem. For example: when a high nitrogen fertilizer is applied to a lawn where a fungus is present, it will act as if someone threw fuel on a fire, spreading the fungus quickly and devastating a gorgeous lawn in a matter of days. He will be able to distinguish fungus as moldy, powdery, rusty growths in streaks, patches or spots from an insect problem. The licensed professional will learn that fungus problems in lawns are often associated with over-watering, over-fertilizing and prolonged damp weather. They will also learn about certain physical and chemical soil conditions that will perpetuate fungus growth.

Continuing education will also teach landscape professionals that some fungal diseases can be spread by lawn equipment and even by their shoes.

Education is about knowing that everything has a science to it.

A full copy of S-2302 can be found at <http://www.njleg.state.nj.us/>

'It is today we must create the world of the future.' Eleanor Roosevelt