



The Florida Senate

Interim Report 2012-136

October 2011

Committee on Regulated Industries

REVIEW REGULATION OF IRRIGATION CONTRACTORS

Issue Description

Irrigation contractors are involved in various types of landscape projects, including planted landscape irrigation, erosion and dust control, athletic field safety, tourism aesthetics, property values, quality of life, irrigation of crops, and wildlife food and habitat protection. Consumers of irrigation services include homeowners, businesses, and local governments. Irrigation contractors are not regulated by the State of Florida, but several counties require a license to perform irrigation contracting.

According to the Florida Irrigation Society, an association that represents irrigation contractors, poor quality irrigation systems result in wasted water use, wasted electricity, runoff and increased use of fertilizer, pesticides, and herbicides, and increased landscape waste. The society also noted that irrigation contractors face a challenging regulatory environment. The proponents of regulating irrigation contractors noted that several Florida counties require irrigation contractors to maintain a license with each county in which they perform services. They note that regulation is not uniform between counties.

In summary, the proponents of regulating irrigation contractors believe that regulation with pre-licensure experience or education requirements, when combined with a requirement for post-licensure education or training, would improve the design, installation, and maintenance of irrigation systems. This would in turn result in less waste of the state's water resources. Proponents also believe that regulation by the state would reduce the current regulatory burden on irrigation contractors because irrigation contractors are currently subject to multiple, conflicting licensing requirements and regulations by the local governments for each jurisdiction in which they perform irrigation contracting services.

This report reviews the factors provided in s. 11.62, F.S., the "Sunrise Act," which the Legislature is required to consider when determining whether to regulate a profession or occupation.

Background

Construction Industry Licensing

The Department of Business and Professional Regulation (department) provides support functions, including processing of licensure applications, investigation of disciplinary cases, and prosecution of disciplinary matters, to the following professional regulation boards that are related to irrigation contracting.

- The Construction Industry Licensing Board (CILB) is responsible for the licensure and regulation under part I of ch. 489, F.S., of construction contractors, including plumbing contractors.
- The Electrical Contractors' Licensing Board (ECLB), is responsible for licensure and regulation of electrical contractors under part II of ch. 489, F.S.
- The Board of Landscape Architecture is responsible for the licensure and regulation of landscape architects under part II of ch. 481, F.S.

Each of these professionals are subject to pre-licensure qualification requirements that include experience, education, and/or continuing education requirements.

Section 489.105(3), F.S., defines the term “contractor” to mean the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others.

Construction contractors in Florida must be certified or registered before commencing business as a contractor.¹ Certification means that the contractor is licensed by the state to contract statewide.² Alternatively, a contractor may register with the state to perform construction services only within the limited geographic confines of the local jurisdiction in which the registered contractor has been licensed by the local jurisdiction.³

A state certification or registration is required for persons who perform the following categories of construction services: general contractor, building contractor, residential contractor, sheet metal, roofing, air-conditioning, mechanical, swimming pool/spa, plumbing, underground utility and excavation, and solar contracting.⁴

A state registration may be issued only if the municipal or county government that issued the local license exercises disciplinary control and oversight over the locally licensed contractors, including forwarding a recommended order in each action to the board as provided in s. 489.131(7), F.S.⁵ The adequacy of the local government’s disciplinary control is based on the local government’s ability to process and investigate complaints and to take disciplinary action against locally licensed contractors.⁶

Counties and municipalities also may issue local professional licenses for certain specialty services that are not specifically defined in s. 489.105(3), F.S. These local licenses for specialty services do not require state registration or certification. Each county and municipality may require different local professional licenses.⁷

The Sunrise Act

Section 11.62, F.S., known as “the Sunrise Act,” sets forth the minimum requirements for any new regulation of a profession. The Sunrise Act provides that it is the intent of the Legislature not to:

- Subject a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulate a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following factors:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

¹ Section 489.113(2), F.S.

² Section 489.113(1), F.S.

³ Section 489.117(1), F.S.

⁴ See s. 489.105(3)(a)-(o), F.S.

⁵ Section 489.117(2), F.S.

⁶ *Id.*

⁷ See s. 26-91, *Pinellas County Municipal Code*, which requires local licenses for tile and marble installation, irrigation systems, veneer installation, carpentry, and painting.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62(4), F.S., requires the proponents of regulation to submit information, which is structured as a “sunrise questionnaire” to provide written documentation that the regulation meets these criteria. Section 11.62(4), F.S., lists the type of information that must be included in the response, including the number of individuals or businesses that would be subject to the regulation, the states that currently regulate the profession or occupation, and the costs associated with the regulation for consumers and the practitioners of the profession or occupation.

Landscape Irrigation Standards

Section 373.228, F.S., makes the legislative finding “that landscape irrigation comprises a significant portion of water use and that typical landscape irrigation systems and Florida-friendly landscaping designs offer significant potential water conservation benefits.” Section 737.228(4), F.S., requires the water management districts to work with the Florida Nursery, Growers and Landscape Association, the Florida Native Plant Society, the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Department of Agriculture and Consumer Services, the Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the Department of Transportation, the Florida League of Cities, the Florida Association of Counties, and the Florida Association of Community Developers to develop landscape irrigation and Florida-friendly landscaping design standards for new construction.

The standards must be developed and scientifically based on model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping. The standards must be based on the irrigation code defined in the Florida Building Code (code), Plumbing Volume, Appendix F. This is a proposed code and not mandatory. Local governments are required to use the standards and guidelines when developing landscape irrigation and Florida-friendly landscaping ordinances. By January 1, 2011, these agencies and entities noted above must have reviewed the standards and guidelines to determine whether new research findings require a change or modification of the standards and guidelines. The proposed code does not contain standards for the professional licensure of irrigation contractors.

Findings and/or Conclusions

Methodology

In preparation of this report, Senate professional staff reviewed and analyzed provisions of the Florida Statutes and rules of the Construction Industry Licensing Board within the Department of Business and Professional Regulation (department). Senate professional staff submitted a sunrise questionnaire to the Florida Irrigation Society (society) and to the Florida Nursery Growers and Landscaping Association (FNGLA). The sunrise questionnaire solicited the information required to be considered under s. 11.62, F.S. Responses to the sunrise questionnaire were prepared by these proponents of regulation.⁸ Senate professional staff also reviewed materials provided by the society, reviewed the research studies regarding irrigation practices, and interviewed representatives of the irrigation contractor industry and other interested persons. Senate professional staff also obtained information from other state agencies, including the department.

⁸ Copies of the questionnaire and the responses submitted by the Florida Irrigation Society and the Florida Nursery Growers and Landscaping Association are on file with the Senate Regulated Industries Committee.

Summary of Irrigation Contracting Profession

According to the Florida Irrigation Society,⁹ irrigation contractors provide services to a wide range of consumers, including individual homeowners, community associations, businesses, commercial and residential developers, agricultural interests, and governmental agencies. The services include the design of irrigation systems, their installation, and their maintenance. The Florida Irrigation Society asserts that there are approximately 3,000 individuals and/or companies in Florida that design, install, and maintain irrigation systems.

The regulation of irrigation contractors is supported by its proponents because of two factors. First, they argue that regulation with pre-licensure experience or education requirements, when combined with a requirement for post-licensure education or training, would promote the improved design, installation, and maintenance of irrigation systems. This would in turn result in less waste of the state's water resources. Second, the regulation of irrigation contractors by the state would reduce the current regulatory burden on irrigation contractors because irrigation contractors are currently subject to multiple, conflicting licensing requirements and regulations by the local governments for each jurisdiction in which they perform irrigation contracting services.

Sunrise Questionnaire and Responses

The following sections of this report will address the responses to the sunrise questionnaire that were submitted by the proponents of the regulation.

Public Health Safety or Welfare Concerns

The survey responses addressed the issue of whether the unregulated practice of irrigation contracting substantially harms or endangers the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.

The Florida Irrigation Society and the Nursery Growers and Landscaping Association noted the importance of protecting Florida water resources. They noted that protecting the state's water resources would protect and benefit the consumer. The Florida Irrigation Society argued that poor design installation and maintenance practices can result in harm or endanger the public health, safety, or welfare through:¹⁰

- (a) Financial loss to developers, consumers, property owners, and homeowners due to loss of landscape materials, and irrigation systems that require more maintenance and repair or replacement from improper construction and wasted water.
- (b) Water system contamination due to improper backflow usage or cross connection.
- (c) Distribution of water-borne pathogens.
- (d) Building and infrastructure damage.
- (e) Unsafe roadways due to overspray and undermining.
- (f) Excess demand on aquifer or surface water sources.
- (g) Irrigation runoff washing contaminants into and polluting surface bodies of water and aquifers.
- (h) Falls by persons attributed to slick conditions caused by irrigation water on sidewalks, and steps.
- (i) Mold, mildew, and termite damage caused by sprinklers installed too close to building foundations.

The respondents argued that the potential for harm is recognizable and not remote. They noted the increasing water rates, water shortages, and the water restrictions that many local governments have imposed, such as bans on sprinkler use. The respondents argue that the lack of professional oversight permits irrigation contractors to "cut corners, use inferior products, stretch practical design limits, and take advantage of uninformed customer..."¹¹

⁹ Since 1966, the non-profit Florida Irrigation Society has represented irrigation installation and service contractors, irrigation designers, consultants, educators, equipment manufacturers, equipment distributors, municipalities, and students. *See* <http://www.fisstate.org/> (Last visited July 28, 2011).

¹⁰ See the Florida Irrigation Society's response to question #1 of the Sunrise Questionnaire.

¹¹ *Id.*

The improper design of an irrigation system can affect the public health, waste natural resources, pollute water, increase costs and minimize the life expectancy of the system.¹² For example, the improper design and installation of backflow preventers could backflow chemicals and pollute the water supply. Improper design could also harm the operator. Improperly designed or installed electrical components of the system could also shock the operator, or pressure relief valves or other safety equipment could fail and injure the operator.¹³

Knowledge of the use of current, more efficient technologies may also contribute to dramatic reductions in water use.¹⁴ For example, systems that utilize soil moisture sensors and sensors that adjust the amount of water used by the system to the weather may result in water savings of 30 percent.¹⁵

The proponents of regulation stressed that proper training of irrigation contractors would foster the proper design and installation of irrigation systems so as to minimize these risks to the public and maximize the benefits to the water supply. They assert that consumers are harmed by inefficient irrigation systems that waste water or poorly installed systems that need to be reworked, abandoned, or replaced. They note that harmed consumers include homeowners, large developers, and government agencies. They further note that many contractors do quality work and use quality products, but that the lack of oversight and the opportunity for unlicensed or unregulated contractors leads to inferior systems. The proponents of regulation presume that licensure, when combined with pre-licensure education and experience requirements and post-licensure continuing education requirements, would ameliorate the harm and benefit consumers of irrigations systems.

Specialized Skill or Training

The survey responses addressed the issue of whether the practice of irrigation contracting requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable.

The Florida Irrigation Society stated that the skills and training for irrigation contractors are readily measurable as evidenced by the irrigation contractor licensing programs in many Florida counties. These programs require a written examination to test the skills of license applicants and four counties also require continuing education as a condition of continued licensure. As discussed below, several states also require a pre-licensure examination and/or post-licensure continuing education.

The Florida Irrigation Society also advised that it is creating a pilot project for online training of irrigation contractors.

Effect on Job Creation

The survey responses addressed the issue of whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, irrigation contracting.

Respondents stated that regulation would not negatively affect job creation or entry into the profession. The Florida Irrigation Society asserted that stewardship of the state's water resources would promote incentives for economic growth. They noted a news report about the negative economic impact of water-use restrictions. The report noted that water restrictions in the Tampa Bay region in 2009 were estimated to cost 347 jobs and \$20 million in lost business.¹⁶

¹² A.G. Smajstrla et al., *Potential Impacts of Improper Irrigation System Design*, University of Florida, The Institute of Food and Agricultural Sciences (July 2002). A copy of this study may be found at: <http://edis.ifas.ufl.edu/pdf/ae/AE02700.pdf> (Last visited May 17, 2011).

¹³ *Id.*

¹⁴ Michael D. Dukes, *Methods to Increase Irrigation Efficiency*, University of Florida, The Institute of Food and Agricultural Sciences (August 9, 2011).

¹⁵ *Id.*

¹⁶ See Florida Irrigation Society's Response citing an article in the April 1, 2009 St. Petersburg Times.

The response from an irrigation contractor member of Florida Nursery Growers and Landscaping Association stated that irrigation contractors would welcome the additional training and that the maturation of the profession through regulation would attract more people into the profession. This respondent also advised that persons could be required to work under an experienced contractor for a period of time before being licensed as is required for a pest control operator's certificate under ch. 482, F.S. That section requires that applicants for the certificate must satisfy one of the specified education prerequisites or have at least three years of employment as a service employee of a pest control licensee.¹⁷

However, another representative for the industry noted that such a requirement may operate as a barrier to entry into the profession because persons with years of experience in the profession who do not possess any of the alternative educational pre-requisites would not qualify for a license because their professional experience was not obtained while in the employ of a licensee.

Effectiveness of Alternatives to State Regulation

The survey responses addressed the issue of whether the public is or can be effectively protected by other means. The principal alternative to state regulation is the current process of regulation at the local level. As noted, the proponents of state regulation assert that state regulation would reduce the regulatory burden on irrigation contractors.

In addition to state licensing of irrigation contractors, the proponents of regulation assert that water conservation efforts would benefit from uniform, state-wide technical standards for the design, installation, and maintenance of irrigation systems. The proponents assert that such a system of state-wide regulation would benefit irrigation contractors who are currently subject to technical standards adopted by local governments which have created greater confusion regarding the applicable standards across the different jurisdictions. The Florida Building Code contains proposed, non-mandatory irrigation standards in Appendix F of the Florida Building Code.¹⁸ According to the society, Dade, Broward, and Palm Beach counties are the only counties to have adopted this code. Other counties have adopted select parts of the code. In the absence of a state standard, several counties have adopted their own standards and irrigation contractors are often confused as to which standards are applicable, especially if they practice in more than one jurisdiction. Proponents assert that this confusion has led to wasted water resources due to irrigation systems being poorly designed, installed, and inadequately maintained.

The Florida Irrigation Society also recommended that regulation could include inspections. The society notes that many Florida irrigation systems are installed without inspection or independent testing. The society, in its supplemental response to the sunrise questionnaire, recommended that systems should be required to be constructed according to the proposed irrigation standards in Appendix F of the Florida Building Code and that they should be inspected by local building officials, registered landscape architects, or engineers.

The regulation of technical standards and the inspection of irrigation systems raise different issues than are addressed by this report. The proponents of regulation regularly reference three distinct subjects of regulation in

¹⁷ See s. 482.132(2), F.S.

¹⁸ 2007 Florida Building Code: Plumbing Volume, Appendix "F", provides the proposed codes for turf and landscape irrigation systems. (Appendix "F", Proposed Construction Building Codes for Turf and Landscape Irrigation Systems.) This provision contains the proposed standards for the design, installation, and maintenance of irrigation system, which includes the:

- American Society of Agricultural Engineers (ASAE) Standards;
- American Society for Testing and Materials (ASTM) International Standards, which includes standards for PVC pipes;
- American Society of Sanitary Engineers (ASSE) Standards, which includes standards for backflow preventers;
- Hydraulic Institute Standards;
- Standards and Specifications for Turf and Landscape Irrigation Systems Florida Irrigation Society Standards; and
- The Soil Conservation Service (SCS) Field Office Technical Guide, Section IV-A - Cropland Codes.

support of regulation, i.e., the regulation of professionals, the regulation of technical standards (such as the building code),¹⁹ and the regulation of water usage (such as water-use restrictions).

The proponents of regulation agree that these are three distinct areas of regulation and that their primary focus or aim is to regulate the profession. They assert that regulation of the profession through uniform, state-wide education, experience, and continuing education standards would be more beneficial to the state's consumers and water resources than the current, multi-jurisdiction system of regulation.

There are no studies that show that water resources are used more efficiently for irrigation in the jurisdictions with regulation than in the unregulated jurisdictions. As noted by Dr. Dukes of the University of Florida's Institute of Food and Agricultural Sciences, comparisons between regulated and unregulated jurisdictions may not be valid because the education and training requirements across the regulating jurisdictions are not consistent. The Irrigation Association (association)²⁰ noted that the measurement of the sprinkler performance, i.e., the efficiency of the irrigation system, is an indication of contractor performance. The association also noted that jurisdictions with mandatory education or training standards for irrigation contractors have been shown to improve the efficiency of irrigation systems if they also employ an active enforcement component through permitting of irrigation system plans and inspections. Furthermore, the association stated that enforcement of performance standards for irrigation systems, such as the rate and uniformity at which the sprinkler disperses the water, is necessary in order to realize the benefits of mandatory training or education for the irrigation contractor.

Cost-effectiveness and Economic Impact

The survey responses addressed the issue of whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, would be favorable. As noted above, the proponents of regulation assert that the current system or regulation subjects them to local government regulation in multiple jurisdictions. In addition to different regulatory requirements in each jurisdiction, the current system requires that irrigation contractor pay a license fee or other regulatory fee to each local government unit for the location in which they wish to practice their profession. According to the society, some irrigation contractors also have the extra expense of paying for continuing education which is accepted by one jurisdiction but not by another. As an example of the current costs, the society noted that some irrigation contractors are required to pay approximately \$900 to \$1,000 in fees to maintain licenses in multiple jurisdictions. In addition to the direct costs of fees, irrigation contractors also incur costs related to managing compliance with the requirements of multiple jurisdictions. The association asserts that state regulation would decrease the costs for irrigation contractors, which savings could be passed on to the consumer.

The Florida Irrigation Society's response included a recommendation for the extent of their proposed regulation, including a recommendation for the applicable fees for such a system. The proponents of regulation support a system in which irrigation contractors would be required to meet license prerequisites, such as an education or experience requirement, a pre-licensure examination, payment of license application fees and license renewal fees, and meeting a prescribed minimum number of continuing education hours or units as a condition for maintaining the license. The society proposed the following fee schedule:

- Application fee \$100.00
- Examination fee \$200.00
- License renewal fee \$100.00
- Late renewal fee \$50.00
- License reciprocity \$250.00

¹⁹ According to the society, irrigation contractors must comply with a number of technical standards, including Appendix "F" of the code, county irrigation codes, city irrigation codes, water management district regulations, plumbing backflow prevention codes, and best management practices by the Florida Department of Environmental Protection and the University of Florida's Institute of Food and Agricultural Sciences.

²⁰ The Irrigation Association is a national association of "irrigation equipment and system manufacturers, dealers, distributors, designers, consultants, contractors and end users." The Florida Irrigation Society is an affiliate member. *See* <http://www.irrigation.org/default.aspx> (Last visited September 8, 2011).

- Corporate license \$100.00
- Duplicate License \$25.00

Cost and Availability of Training and Education

Regarding the cost and availability of the education requirement, the society advises that the society offers skills training and business classes for irrigation contractors. The society could also serve as a continuing education provider. The Florida Nursery Growers and Landscaping association has indicated that they also offer continuing education courses for their members. The cost for these classes ranges from \$15 to \$25 per class hour. The Florida Irrigation Society also advises that equipment manufacturer's routinely offer free training on their product lines. The Irrigation Association offers professional certification programs for irrigation contractors. The certification programs consist of courses and a certification exam for approximately \$500.00.²¹

Although current federal laws do not require the regulation of irrigation contractors, the U.S. Environmental Protection Agency (EPA) offers a landscape irrigation certification program for the design, installation, and maintenance of water-efficient irrigation systems.²² The program's private sector partners offer certification courses and examinations. The fees for the certification programs vary from application fees that range from \$50 for members of the Irrigation Association to \$175 for nonmembers and examination fees of \$150 for Irrigation Society Members to \$275 for nonmembers.²³

In addition to the costs associated with license applications, examinations, and continuing education and training, a representative for the plumbing contractors expressed the concern that, if licensed, irrigation contractors should be subject to the same certification requirements as other Division II contractors under part I of ch. 489, F.S.,²⁴ including provisions related to financial ability, insurance (liability and workers' compensation), experience, training, examination (including pass rate), continuing education (14 hours every two years), and disciplinary measures. The representative for the plumbing contractors asserted that this would avoid confusion or potential consumer harm because licensure requirements for construction contractors should remain as consistent as possible among the various trades.

Cost of Regulation

Senate professional staff submitted the society's proposed regulatory system and fees to the Department of Business and Professional Regulation for a fiscal analysis to determine the anticipated, estimated costs of regulating irrigation contractors and whether the proposed fees would adequately fund such a system.

A principal issue in such a fiscal analysis is which agency would be responsible for the regulation. Although the fiscal analysis was requested of the department, the regulation of irrigation contractors could also be housed in another agency with experience in the regulation of non-medical professionals, such as the Department of Agriculture and Consumer Services which regulates pest control operators. However, representatives for the irrigation contractors advised that the Department of Business and Professional Regulation was better suited to house the regulation because it has regulatory responsibilities for other professions that are closely related to the practice of irrigation contracting. These related professions include construction contractors (including plumbers) under ch. 489, F.S., electrical contractors under part II of ch. 489, F.S., and landscape architects under part II of ch. 481, F.S.

If the regulation of irrigation contractors were placed within the department, the next issue is whether the regulation should be performed directly by the department without a board, by the Construction Industry

²¹ *Id.*

²² See The U.S. Environmental Protection Agency's WaterSense program at: http://www.epa.gov/WaterSense/services/cert_programs.html (Last visited August 24, 2011).

²³ See http://www.irrigation.org/Certification/CID/Process___Fees.aspx (Last visited August 24, 2011).

²⁴ Pursuant to s. 489.105(3), F.S., "Division I" contractors are the general contractor, building contractor, and residential contractors. Division II is comprised of the contractor categories in s. 489.105(3)(d)-(r), F.S., which includes plumbing contractors.

Licensing Board (CILB), or by creating a new board whose sole responsibility would be the regulation of irrigation contractors. The proponents of regulation did not express a preference for any specific option. Instead, they expressed a preference for the least expensive option. Examples of construction professionals that are regulated directly by the department and not through the CILB or another board are home inspectors and providers of mold-related services.²⁵

Senate professional staff asked the department to prepare a fiscal analysis for the two options that were presumed to be less expensive to administer, i.e., regulation through the CILB or directly through the department. The fiscal analysis was based on the society's estimate that there are approximately 3,000 individuals and/or companies in Florida that design, install, and maintain irrigation systems and on the comprehensive licensing/regulation program preferred by the proponents of regulation.

Based on the department's fiscal analysis, the society's proposed fee schedule appears to adequately fund the proposed system of regulation under either option. However, the least expensive option would be regulation by the department without a board because of the estimated \$6,000 expense associated with adding a new board member to represent irrigation contractors on the CILB.

Regarding regulation by the CILB, a representative for Associated Builders and Contractors of Florida, which is an association representing general contractors, subcontractors, suppliers and affiliated companies, expressed its concern regarding adding a new member to CILB to represent irrigation contractors because that would upset the current balance on the board between Division I and Division II contractors.²⁶ The board currently consists of seven Division I contractors, seven Division II contractors, two consumer members, and two building officials of a municipality or county.²⁷ The Associated Builders and Contractors of Florida recommended that the irrigation contractors could be regulated by the department without a board in the manner that home inspectors and providers of mold-related services are currently regulated.²⁸

Regulation by Florida Counties

According to the society, 34 Florida counties regulate irrigation contractors by requiring a certificate of competency.²⁹ Of those counties, only Miami-Dade, Lake, Pinellas, and Volusia counties require continuing education as a condition of licensure. Based on information provided by the society, approximately 1,800 irrigation contractors are licensed by these counties.

As noted earlier, the society has expressed the concern that the regulation of irrigation contractors by counties instead of the state creates a regulatory burden on irrigation contractors because it subjects them to multiple, conflicting licensing requirements and regulations in each jurisdiction in which they perform irrigation contracting services. This concern is illustrated by comparing the requirements in three neighboring counties: Miami-Dade County, Broward County, and Palm Beach County.

Broward County requires a certificate of competency for lawn sprinkler plumbers.³⁰ The scope of work for the certification "includes, but is not limited to the installation, maintenance, repair, alteration, and extension of lawn sprinkling systems and the equipment, appliances, and apparatus used in connection therewith." Broward County prohibits lawn sprinkler plumbers from drilling wells or connecting any sprinkler systems to potable water sources. Broward County exempts the sprinkler and irrigation systems used for or in connection with agriculture from the scope of work of a lawn sprinkler plumber. An applicant must have at least one year of practical

²⁵ See parts XV and XVI of ch. 468, F.S., respectively.

²⁶ See supra n. 24.

²⁷ Section 489.107(2), F.S., provides for the composition of the Construction Industry Licensing Board..

²⁸ See supra n. 25.

²⁹ The Florida counties are: Brevard, Broward, Charlotte, Citrus, Clay, Collier, Dade, Duval, Escambia, Flagler, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Marion, Martin, Monroe, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Johns, St. Lucie, Sarasota, Seminole, Volusia, and Wakulla.

³⁰ See Part II, ch. 9, Art. II, s. 9-55, Broward County, Florida, Code of Ordinances.

experience in the lawn sprinkler trade to be eligible for certification as a lawn sprinkler plumber. The application fee is \$250.³¹ The applicant must also pass a pre-licensure examination.³²

Miami-Dade County requires a certificate of competency for lawn sprinkler contractors.³³ The contractor must have the financial means to operate and have a qualifying agent with one year experience in the lawn sprinkler trade, and be qualified and certified to install, maintain, repair, alter or extend a lawn sprinkling system and appliances and devices used in connection with such systems. The scope of work does not include the drilling of wells or the connecting of such systems to potable water. Miami-Dade County exempts sprinkler and irrigation systems that are used for agricultural purposes. An examination is required.³⁴ The initial application fee is \$315.³⁵ Miami-Dade County requires lawn sprinkler contractor to complete one or more continuing education courses before the biennial renewal of their certificate of competency.³⁶

Palm Beach County requires a certificate of competency for irrigation sprinkler contractors. The certification permits the irrigation sprinkler contractor to design, install, maintain, repair, alter, or extend all piping, sprinkler heads, control system components, pumps, and chemical injectors for irrigation of lawns and plants. Palm Beach County provides specific limits to the type of electrical work that the contractor may perform, and limits the types of connection the contractor may make to the water supply. Any work that exceeds those limits must be subcontracted to a certified electrical contractor, plumbing contractor, paving contractor, water well driller, horizontal driller or masonry contractor as needed to complete the irrigation system.³⁷ Palm Beach County requires a minimum of three years experience in one or more of the crafts of the building construction and related contracting trades. One and half years of the experience must be in a supervisory capacity. The applicant must pass a pre-licensure examination.³⁸ The application fee is \$450.³⁹ The county does not require continuing education.

Regarding limitations on the scope of work for an irrigation contractor, as is provided in Palm Beach County, a representative for license plumbing contractors expressed the concern that any regulation of irrigation contractors should clearly delineate the scope of work to the outlet side of the backflow. As explained by the representative for the plumbing contractors, only licensed plumbing contractors should work on the backflow device, which protects the potable water source, because this skill is covered under the plumbing contractor's training, experience, qualification, and license.

The neighboring counties of Broward and Miami-Dade share comparable scope of work provisions for irrigation contractors, and both counties require one year of experience for the license. However, Miami-Dade County requires continuing education. Palm Beach and Broward do not require continuing education. Palm Beach has a different scope of work definition than that provided in the Miami-Dade and Broward counties. Palm Beach County also requires more experience than the other two counties. In practice, a person may qualify for a

³¹ See the form titled "Application Information for Examination or Reciprocity, Broward County Contractor Licensing and Enforcement, Lawn Sprinkler Contractor" by the Permitting, Licensing, and Consumer Protection Division, Broward County, Florida. A copy of the form is available at: http://www.broward.org/PermittingAndLicensing/Licensing/Documents/lawnsprinkler_lic.pdf (Last visited August 18, 2011).

³² See Part I, ch. 9, Art. I, Div. I, s. 9-6, Broward County, Florida, Code of Ordinances.

³³ See Part III, ch. 10, art. I, s. 10-2, III., V(B)(6), Miami-Dade County, Florida, Code of Ordinances.

³⁴ See Part III, ch. 10, art. I, s. 10-8, III., V(B)(6), Miami-Dade County, Florida, Code of Ordinances.

³⁵ See Application for Personal Certification, Construction Trades Qualifying Board, Miami-Dade County, Florida. A copy of the application is available at: <http://www.miamidade.gov/building/library/contractor/forms/personal1.pdf> (Last visited August 18, 2011).

³⁶ See Part III, ch. 10, art. I, s. 10-13, Miami-Dade County, Florida, Code of Ordinances.

³⁷ Standards for Certified Categories, Construction Industry Licensing Board of Palm Beach County. A copy of the standards is available at: <http://www.pbcgov.com/pzb/Contractors/standards.pdf> (Last visited August 18, 2011).

³⁸ See form by the Construction Industry Licensing Board of Palm Beach County entitled "Exams Required for all Licenses Are: Business Procedures Examination and trade Exam." A copy of this form is available at: http://www.pbcgov.com/pzb/Contractors/forms/exam_info_book_list.pdf (Last visited August 18, 2011).

³⁹ See Rules and Regulations, Construction Industry Licensing Board of Palm Beach County. A copy of the rules and regulations is available at: <http://www.pbcgov.com/pzb/contractors/rulesandregs.pdf> (Last visited August 18, 2011).

certificate of competency in Broward County to perform irrigation contracting services but may not be able to qualify to perform the same work in Miami-Dade or Palm Beach counties.

In addition to the application fees specified above, irrigation contractors are also subject to fees for renewal of their certificate of competency and continuing education fees. Some counties also require irrigation contractors to maintain liability insurance.⁴⁰

State regulation of irrigation contractors could maintain the option of county regulation. Similar to what is provided in s. 489.117(1)(b), F.S., for contractors, this type of regulation could permit irrigation contractors to register with the state and be licensed by the local jurisdiction if they limit their practice to the geographic limits of the local jurisdiction.

Regulation in other States

Eight states (California, Connecticut, Louisiana, New Jersey, North Carolina, Rhode Island, South Dakota, and Texas) regulate irrigation contractors.

Although these states regulate irrigation contractors in different ways, they share several similarities. Each of the eight states requires an examination as a condition of licensure. Every state, except Texas, has a minimum experience requirement or requires a combination of experience and education. For example, North Carolina requires three years of experience in irrigation construction or contracting and one year of experience may be substituted for two years of educational training in irrigation construction or contracting.⁴¹

Connecticut is the only state that regulates irrigation contractors as a sub-discipline of the plumbing profession, i.e., a plumbing license is required to engage in irrigation contracting.

The states also vary in the amount of experience in the practice of irrigation contracting that is required as a condition of licensure. Rhode Island⁴² and South Dakota⁴³ require irrigation contractors to progress through the apprentice, journeyman, and master levels of licensure. However, none of the states require more than three years of experience as a condition for a license. Louisiana and Texas do not have minimum experience requirements.

Three of the states have clearly delineated continuing education requirements as a condition of licensure. Louisiana requires one seminar every three years,⁴⁴ North Carolina requires 10 hours of continuing education for each annual license renewal,⁴⁵ and Texas requires 24 hours of continuing education for the triennial renewal of an irrigation contractor license, 16 hours for the triennial renewal of an irrigation technician license, and 24 hours for the triennial renewal of an irrigation inspector license.⁴⁶

⁴⁰ See for example, Miami-Dade and Broward Counties require irrigation contractors to maintain liability insurance of \$300,000 for bodily injury liability and \$50,000 for property damage liability. See Part III, ch. 10, art. I, s. 10-19, Miami-Dade County, Florida, Code of Ordinances, and Part I, ch. 9, Art. I, Div. I, s. 9-7(e)(4), Broward County, Florida, Code of Ordinances.

⁴¹ N.C. Gen Stat. s. 89G-6 (2010).

⁴² Rhode Island requires one year as an apprentice followed by one year as a journeyman before qualifying for a license as a Master Irrigator, *See* R.I. Gen. Laws, ch. 5-20 (2010).

⁴³ South Dakota require irrigation contractors to have at least one year's experience as an apprentice in the employ of a licensed master contractor before qualifying as a journeyman contractor. They must then have at least one year of experience as a journeyman before being licensed as a master irrigator. An examination is required for a journeyman license and for a master license. S.D. Codified Laws, Title 30, part 1, ch. 30, subchapter D. (2011).

⁴⁴ *See* rule of the Louisiana Horticulture Commission Rule, N.C. Admin Code, tit. 7, part XXIX, s. 117. I.

⁴⁵ N.C. Gen Stat. s. 89G-9 (2010).

⁴⁶ *See* Tex. Admin. Code, tit. 30, part I, ch. 30, subchapter D (2011). Texas licenses three categories of irrigation contracting: irrigator license, irrigation technician, and irrigation inspector. The primary difference between an irrigator license and an irrigation technician license is that the irrigation technician cannot sell, design, install an irrigation system.

Voluntary Certification of Specialty Contractors

Section 489.113(6), F.S., provides a process for voluntary certification of specialty contractors by rule of the CILB. Voluntary certification under this process does not require legislative action. A specialty contractor is a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by rule of the Construction Industry Licensing Board and whose scope of work is limited to a subset of the activities described for one of the contractor categories described in s. 489.105(3), F.S., which includes plumbing contractors.⁴⁷ The installation, maintenance, and repair of irrigation systems are within the scope of work of plumbing contractors.⁴⁸ The scope of work and responsibility of the specialty contractor would be established by the rule.⁴⁹ The Construction Industry Licensing Board currently provides voluntary certification for ten specialty contractor classifications, for example, gypsum drywall contractors.⁵⁰ If the board were to provide for the voluntary regulation of irrigation contractors, it would establish the minimum qualifications for the irrigation contractor specialty, the applicable fees, develop the required pre-licensure examination, and the minimum required hours of continuing education.

Voluntary certification does not require irrigation contractors to obtain the state certification. This would permit irrigation contractors in the 34 counties that do not currently regulate irrigation contractors to continue to practice their profession without any additional license requirement or regulation. A specialty contractor without a voluntary certification from the CILB may be required to meet any license requirements established by the local jurisdiction in which they practice. However, a specialty contractor with a CILB-issued voluntary certification would possess a state-wide certification and would not be required to hold a local certification in addition to the CILB-issued certification. Voluntary regulation would eliminate the need to obtain multiple licenses for irrigation contractors who practice their profession in more than one county.

According to the department, an important consideration when providing for voluntary regulation of a specialty contractor is to limit the scope of work of the specialty so as to not include work that could make the license mandatory.

The Florida Irrigation Society has expressed an interest in exploring the option of voluntary regulation. A concern of the society is that voluntary regulation would not achieve all of the goals of the proponents of regulation. Irrigation contractors who are currently not licensed and required to meet minimum education or training standards, including a continuing education requirement, would continue to practice the profession without any training or education in technologies and practices that may foster the efficient use of water resources.

According to the department, the cost of voluntary regulation should be comparable to the estimated cost of regulation by the department. As noted previously regarding the department's fiscal analysis for regulation of the profession by the department, the society's proposed fee schedule would also appear adequately fund a program of voluntary regulation. The department indicated that it could absorb the additional workload without more staffing, except it would need an additional employee to process applications. The department's fiscal analysis was based on an estimated 3,000 license applications. The department indicated that fewer applications generally means that licensees would have to pay more for license renewals or would have to pay special assessments. The society estimates that one-third of the approximately 1,800 irrigation contractors that are currently licensed by the counties would seek a voluntary state license.

Options and/or Recommendations

If the Legislature finds that the criteria in s. 11.62, F.S., for the new regulation of a profession are satisfied, the Legislature could choose to regulate the profession of irrigation contracting. Senate professional staff recommends that the Legislature should consider the following issues in determining the manner in which the profession would be regulated:

⁴⁷ See s. 489.105(3)(r), F.S.

⁴⁸ See 489.105(3)(m), F.S.,

⁴⁹ Section 489.113(6), F.S.

⁵⁰ See Rule 61G4-15.017, F.A.C.

- The amount of the fees needed to fund the regulation of the profession, including fees for license applications, examinations, and license renewals;
- Whether to house the regulation of the profession within the department or within another agency. If the regulation were housed within the department, the Legislature could choose for the regulation to be performed directly by the department without a board, it could create a new board for the regulation of the profession, or it could provide for regulation by the CILB. If the regulation of the profession were conducted by the CILB, the Legislature could expand the members of the board to include a representative for the irrigation contracting industry or elect not to add a new member to the board;
- The minimum qualification that should be required to hold a license as an irrigation contractor, including the minimum amount of education, training, and experience;
- The minimum amount of continuing education required for renewal of the license and the subject matters that should be included in that continuing education, such as education related to safety and the use of technologies and practices that better manage water resources; and
- Which current licensees would not be required to obtain an irrigation contractor's license and who may continue to perform such services under the scope of their current license.

Alternatively, if the Legislature finds that the criteria in s. 11.62, F.S., for the new regulation of a profession are satisfied, the Legislature could also choose not to enact mandatory regulation and to await the results of any efforts by irrigation contracting industry to petition the CILB for voluntary regulation pursuant s. 489.113(6), F.S.