

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

STATE BOARD OF LANDSCAPE ARCHITECTS REGULATION NO. 16A-612

CONTINUING EDUCATION

SEPTEMBER 18, 1998

We have reviewed this proposed regulation from the State Board of Landscape Architects (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to legislative intent, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 15.71. Definitions. - Clarity

Office Management

Courses in office management cannot be used to satisfy continuing education requirements. The proposed definition of *office management* includes the "use of ... computers." Therefore, under this definition, courses relating to computer applications which directly involve the practice of landscape architecture cannot be counted toward meeting the continuing education requirement. To address this concern the Board should amend the definition of *office management* to exclude computer applications which relate to the practice of landscape architecture from the definition.

Provider

The definition of *provider* is an agency, organization, institution or association *approved* by the Board to offer an organized course. In later sections of the regulation, the Board uses the term "approved provider." To avoid this inconsistency, the Board should amend the definition to be "approved provider" and use this term consistently throughout the regulation.

2. Section 15.72. Requirement for biennial renewal. - Clarity

This section references ten hours of continuing education. For clarity purposes, the Board should amend this provision to refer to ten *clock* hours since "clock hours" is the defined term.

3. Section 15.73. Acceptable continuing education courses. - Reasonableness and Clarity

Clarity

Subsection (c) refers to five credit hours. The Board should amend this provision to refer to five clock hours since "clock hours" is the defined term.

Limitation on Satellite Seminars and Electronic Presentations

We question the reasonableness of the Board accepting no more than five hours per biennium from satellite seminars or electronic presentations. Because of the limited number of landscape architects, there may only be a limited number of courses offered throughout the Commonwealth. Satellite seminars and electronic presentations may be a reasonable alternative for many licensees who will not have courses offered in their region. Therefore, the Board should reconsider reasonableness of the five-hour limitation.

Role of the Moderator

Subsection (c)(1) requires that a satellite seminar have "a monitor present or available by a telecommunication facility." We have several questions with this provision. First, the American Society of Landscape Architects asked if this provision means that a moderator must be present at every telecommunication site. We request the Board explain its intent. Second, if it is the Board's intent to have a moderator at the site, the Board should explain the need for the moderator and if the moderator must be a qualified instructor. Finally, the Board should clarify what is meant by "available by telecommunication facility."

Definition of "electronic presentation"

Subsection (c)(2) refers to courses completed via electronic presentation. To improve the clarity of this provision, the Board should specifically define "electronic presentation" in Section 15.71.

4. Section 15.74. Approval of continuing education providers. - Reasonableness and Clarity

Subsection (a) provides that a course provider may apply to the Board for approval as a course provider each biennium. It is not clear if the Board intends that a provider must seek approval every two years. If it is the Board's intent to require approval every biennium, why must a previously approved provider repeat this process? If the information has not changed, there is no need for a new filing. If there is a need for approval every two years, the Board should consider a shorter process which requires the provider to only submit information that has changed since its previous approval.

Subsection (a) addresses approving organizations as providers. However, the remainder of this section concerns Board approval of individual courses. It is not clear if the Board will be approving the providers, the courses, or both. For clarity, the Board should split this section in two. One section would discuss the approval of providers and another section would discuss the approval of individual courses. In addition, the fee structure in Section 15.12 only includes a fee

for provider approval. Therefore, if the Board is going to review individual courses it should establish a fee for individual course approval.

Subsection (b) requires a course provider to submit an application 120 days prior to the date of the course. However, there is no timeframe for the Board to act on the application. The Board should include a timeframe within which it will act on the application to ensure it will be reviewed prior to the course being offered.

5. Section 15.75. Standards for courses. - Legislative Intent

Subsection (b) requires providers to ensure that instructors are qualified. Subsection (c)(1) indicates that providers must have procedures to periodically review the qualifications of its instructors. However, the regulation does not define what is considered a qualified instructor. These two provisions are inconsistent with the Landscape Architects Registration Law. Specifically, Section 9.1(c) provides that the Board, not the provider, shall approve all instructors.

To remedy this conflict, the Board should delete all references which indicate a provider determines if an instructor is qualified. Instead, the Board needs to include the standards used to determine a qualified instructor in the regulation. The Board could then allow the provider to document the instructors' qualifications as part of the course application process.

6. Section 15.76. Sources of continuing education courses. - Reasonableness and Clarity

Subsection (b) provides that approved providers shall submit course material and fees for courses as provided for in Sections 15.12 and 15.74. As previously noted, there is no fee for course review and approval. Furthermore, it would not seem reasonable to require an organization that has already received Board approval, such as those listed in Subsection (a), to pay the fee for provider approval. Therefore, the Board needs to amend this section to clearly reflect the specific fees and materials that must be submitted by the approved providers listed in Subsection (a).

7. Section 15.77. Licensee application for nonpreapproved continuing education courses. - Reasonableness

Subsection (d) requires licensees to submit acceptable documentation demonstrating successful completion of courses for which the licensee sought Board approval. We question why the licensee must submit this documentation for these types of courses when the licensee is not required to do so for all other courses. The Board should just require that the licensee keep the documentation that is required under Section 15.80.

8. Section 15.78. Withdrawal of approval of program sponsors. - Reasonableness

This section allows the Board to withdraw its approval of a provider. However, as the House Professional Licensure Committee observes, there is no appeal process for this action. To avoid any question over due process, the Board should include the appeal process or a reference to the appeal process a provider may use when the Board has revoked the provider's approved status.

9. Section 15.80. Retention of records. - Reasonableness

This section requires the licensee to retain licensure renewal forms and documents demonstrating completion of the education requirements for four years. Because a course may be completed in the middle of a biennium period, it may be easier for the retention of records to coincide with the biennium period. We recommend that the retention requirement be limited to the current and immediate preceding biennium periods.

The House Professional Licensure Committee observed that there is no requirement for course providers to retain a list of who has successfully completed a course. There is merit to requiring providers to maintain this documentation in case there is a question about a licensee's successful completion of a course. We recommend that the Board add a record retention period for providers which is consistent with the retention requirement for licensees.



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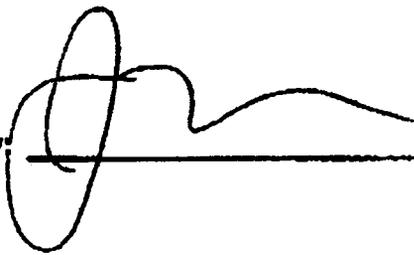
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of Pages: 8



Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Landscape Architect's regulation #16A-612 (#1963). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  **Date:** 9-18-98