

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(1) Agency:
Department of State, Bureau of Professional and Occupational Affairs, State Board of Landscape Architects

(2) Agency Number: 16A
Identification Number: 6110

IRRC Number: 2994

(3) PA Code Cite: 49 Pa. Code §§ 15.56, 15.72 and 15.80

(4) Short Title:
Continuing Education and Elimination of Registration without Examination

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The State Board of Landscape Architects (Board) is proposing to remove § 15.56 (relating to registration without examination) because Act 24 of 2009 deleted the provisions previously in section 6(c)(ii) of the act (63 P.S. § 906(c)(ii)) that had permitted a "grandfathering" provision for two types of applicants (those with 10 or 15 years of experience). Also, because the legislature amended the act to increase from 10 to 24 the hours of biennial continuing education (CE) mandated for licensees beginning with the license period designated by the Board, the Board is amending § 15.72 (relating to requirement for biennial renewal) to change the number of biennial CE from 10 to 24 hours effective with the 2013 – 2015 biennial renewal cycle to be completed by May 31, 2015, as a condition of renewal and continuing thereafter. As discussed in the Preamble, the Board would also propose in § 15.72(d) that a licensee who exceeds the required number of clock hours in any renewal period may carry forward a maximum of 12 continuing education credits into the subsequent renewal period. Finally, due to the carry forward provision, the Board is extending the retention of continuing education records in § 15.80(a) & (c) (relating to retention of records) for an additional 2 years, from the current 4 years to 6 years.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The proposed amendments to §§ 15.56 and 15.72(a) are mandated by the July 17, 2009, amendments to the act at sections 6(c) and 9.1(b) (63 P.S. §§ 906(c) and 909.1(b)). Furthermore, section 4(9) of the act (63 P.S. § 904(9)) authorizes the Board to adopt, promulgate and enforce rules and regulations not inconsistent with the act as it deems necessary to carry into effect the powers conferred by the act. Finally, section 9.1(a) of the act (63 P.S. § 909.1(a)) requires the Board to adopt, promulgate and enforce regulations consistent with the provisions of the act establishing requirements for continuing education.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, the Board makes these changes to conform the Board's regulations to the amendments made to the Landscape Architects' Registration Law ("act"), as amended by the act of July 17, 2009 (P.L. 94, No. 24) (Act 24 of 2009).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is necessary to ensure that the Board regulations conform to current statutory changes and do not cause confusion in the regulated community or in the general population. Furthermore, the 1,006 licensees in the regulated community, the public and those who contract for the services of landscape architects will benefit from these changes because landscape architects will be required to take more continuing education.

Although the Board had initially anticipated that the increased continuing education requirement would be implemented for the 2011-2013 biennium, these amendments would now provide that the increased continuing education hours will be required to be completed for the first time during the 2013-2015 biennium (from June 1, 2013 through May 31, 2015), and will continue thereafter. The practical effect of this requirement is that a licensed landscape architect will have to take 14 additional credit hours of continuing education by May 31, 2015, to renew a license. As it has done since 2010, the Board will continue to inform its licensees of the increased continuing education requirements through the Board's newsletters and through a notice on the Board's website. After the Board's adoption of this revised timeframe at its meeting on November 8, 2012, the Board posted a notice on its website on November 21, 2012.

Finally, the Board would add a new subsection (d) at § 15.72 to allow a licensee to carry over a maximum of 12 continuing education credits (half of the newly required 24 credits) into the subsequent renewal period. A carry-forward provision would encourage licensees to maximize the continuing education they take and not be deterred from taking continuing education if they do not need it for credit during the current biennial cycle. In other words, if a licensee has already taken the required continuing education credits and then sees an excellent course to take in the final months of the continuing education renewal period, the licensee will receive future credit for taking this course.

A positive consequence of the carry-forward provision is also that licensees who took additional continuing education courses during the 2011-2013 biennium in anticipation of the Board's implementation of Act 24 of 2009 will now be able to carry forward up to 12 of those credits. For example, if a licensee obtained 22 continuing education credits during the 2011-13 biennial period (from June 1, 2011 through May 31, 2013), that licensee could carry over 12 continuing education credits into the next renewal period of 2013-2015. In this example, that licensee would only need to obtain a minimum of 12 additional continuing education credits from June 1, 2013 through May 31, 2015.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal licensure standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Because this regulation is required by Act 24 of 2009, comparison with provisions in other states is irrelevant. However, many states surrounding Pennsylvania also require 24 hours of continuing education for licensees during a biennial period. (The following states require at least 24 hours of CE every 2 years: Arkansas, Connecticut, Indiana, Iowa, Kansas, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, South Dakota, Tennessee, Washington & Wisconsin.) With respect to a carry forward provision, 11 states allow for such a provision for half of the continuing education credits (Arkansas, Arizona, Louisiana, Minnesota, Montana, New Hampshire, South Carolina, South Dakota, Tennessee, Utah & Washington), while 5 additional states allow for a carry forward provision for all of the continuing education credits (Kansas, Kentucky, Oklahoma, Texas & West Virginia). As discussed in item 14 below, the Board obtained this information from the American Society of Landscape Architects (ASLA), which sent representatives to the November 8, 2012 meeting to discuss this information with the Board. Therefore, the regulation will not place Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect other regulations of the Board or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

During 2011 and 2012, the rulemaking was discussed in open session at public board meetings. During some of these public meetings, representatives of the professional associations representing members of the regulated community were in attendance.

The Board staff also obtained information from the American Society of Landscape Architects (ASLA) on the cost of continuing education in determining the costs associated with the increased continuing education requirement imposed by Act 24 of 2009, as well as the requirements for continuing education credits and carry forward provisions as noted above in the answer to question 12. Prior to the November 8, 2012 meeting, the Board sent pre-exposure drafts of this regulation to the ASLA and the Council of Landscape Architectural Registration Boards (CLARB), which is the organization representing State Boards of Landscape Architects throughout the nation. Representatives of the national and state affiliate of ASLA discussed the continuing education requirements of § 15.72, including the carry forward provisions, with the Board at its meeting on November 8, 2012.

Although the Board had initially anticipated that the increased continuing education requirement would be implemented for the 2011-2013 biennium, these amendments would now provide that the increased continuing education hours will be required to be completed for the first time during the 2013-2015 biennium (from June 1, 2013 through May 31, 2015) and continuing thereafter. The practical effect of this requirement is that a licensed landscape architect will have to take 14 additional credit hours of continuing education by May 31, 2015, to renew a license.

The Board has provided notice to its licensees of the increased continuing education requirements through the Board's newsletter two times during 2010 since Act 24 of 2009 was enacted. In addition, a special notice of the increase continuing education requirement appeared on the Board's website. As it has done since 2010, the Board will continue to inform its licensees of the increased continuing education requirements through the Board's newsletters and through a notice on the Board's website. After the Board's adoption of this revised timeframe at its meeting on November 8, 2012, the Board posted a notice on its website on November 21, 2012.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are 1,006 licensed landscape architects in Pennsylvania. According to the Pennsylvania Department of Labor and Industry in 2008, the majority of landscape architects work in architectural and engineering services (60.2%), while a minority of landscape architects work in services to buildings and dwellings (15.8%), are self-employed (14.0%) or work for the federal government (1.1%). Other landscape architects work for consulting services, for other miscellaneous store retailers, in activities related to real estate, for residential building construction, or in offices of real estate agents and brokers.

For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where landscape architects work, a small business in architectural services is one with \$4.5 million or less in average annual receipts. Likewise, a small business in engineering services is also one with \$4.5 million in average annual receipts. According to NAICS, small businesses providing landscape architectural services have \$7.0 million or less in average annual receipts. Obviously, the 14% of landscape architects who are self-employed work in small businesses. Lessors of real estate for residential and nonresidential buildings as well as lessors of other real estate property are each classified as small businesses if they have \$7.0 million or less in average annual receipts. Likewise, the NAICS threshold is \$7.0 million each for consulting services, other management consulting services and other scientific and technical consulting services. The NAICS threshold for miscellaneous store retailers is also \$7.0 million, while department stores except for discount department stores are \$30 million in estimated annual receipts. Also a high threshold exists for residential building construction at \$33.5 million in estimated annual receipts. Finally, offices of real estate agents and brokers is the lowest threshold at \$2.0 million in estimated annual receipts. In considering all of these small business thresholds set by NAICS for the businesses in which landscape architects work, it is probable that most of the 1,006 licensed landscape architects work in small businesses.

Although many licensed landscape architects either are or work in small businesses, whether or not these small businesses will be adversely affected by the increased amount of continuing education hours from 10 to 24 during a biennial period, and to what extent, is subject to many factors. First, as noted in the answer to question 19, not all continuing education courses require licensees to pay for the continuing education. Second, some licensees working in a variety of small businesses will have their continuing education costs (if any) paid for by their employers, while other licensees will pay for their continuing education costs themselves. The only licensees who must necessarily pay for their own continuing education costs are those who are self-employed, which constitutes only 14% of all landscape architects in Pennsylvania (or about 140). Finally, it is important to note that it was the Pennsylvania General Assembly in enacting Act 24 in 2009 that increased the number of required continuing education hours from 10 to 24 during a biennial period. The only determination made by the Board in this regulation was when to implement this statutorily-mandated requirement. Therefore, the costs of complying with the increased continuing education requirement will fall to some extent upon small business.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are 1,006 landscape architects licensed by the Board, including those who work for small businesses, that will be required to comply with the rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The financial and economic impact of the regulation upon licensees and the potential effect upon the businesses in which the licensees work is discussed in the answers to questions 15 and 19. Not all of the financial and economic impact of the regulation will be negative due to the increased amount of continuing education required. Those businesses and associations that are course providers for continuing education, which are listed at 49 Pa. Code § 15.76 (relating to sources of continuing education courses), will benefit from providing 14 additional credit hours of continuing education during a biennial renewal period.

The regulation is beneficial to ensure that the Board regulations conform to current statutory changes and do not cause confusion in the regulated community or in the general population. Furthermore, the regulated community, the public and those who contract for the services of landscape architects will benefit from these changes because landscape architects will be required to take more continuing education. This will hopefully result in increased public welfare and safety for the work done by landscape architects.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulated community, the public and those who contract for the services of landscape architects will benefit from these changes because landscape architects will be required to take more continuing education. Also, the regulation will benefit the regulated community, those who contract for the services of landscape architects and the public by ensuring that board regulations are consistent with amendments to the act and will not be a source of confusion.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because the costs of current continuing education (CE) vary from one course provider to another and from one type of CE to another, a precise estimate of the increased costs is not possible.

There are at least four types of courses for licensees:

- 1) Some of the courses are free, presented as “lunch and learn” opportunities.**
- 2) Chapter meetings where CE is offered. There, the costs depend on location and the number of meals included.**
- 3) Others are parts of meetings that charge a registration fee such as the American Society of Landscape Architects (ASLA) annual meeting and meetings held by ASLA chapters as well as those by other organizations such as American Planning Association. The ASLA annual meeting fee depends upon when someone registers. The early bird rate is \$465 (usually attendees can earn 15-18 credits easily, some as much as 21, so the cost per course varies from \$22 to \$31 per credit).**
- 4) For ASLA Landscape Architectural Technical Information Series (online publications with exams), members can access exams for free (non-members pay \$50). Then to earn credit, a licensee must pass an exam, for which the fee is \$40. The number of credits varies per publication from 1.5 to 4, so the average cost per credit for licensees who are members of ASLA varies from \$10 to \$27 per credit. (Incidentally, the Board’s regulations at § 15.73(c) allow a licensee to take up to half of their CE credits through some form of distance learning, include satellite seminars, correspondence courses or electronic or online presentations as in the example here.)**

In general, costs for all of these CE sources vary from free courses to \$10 to \$31 per credit hour. Thus, the costs for 14 additional credits of CE per licensee are approximately \$434 at the most for a 2-year period or approximately \$217 at the most for each licensee per year. The ASLA has kept costs down over the last 5 years and does not expect to increase costs in the next 5 years, especially for early bird registration at annual meetings.

In conclusion, the average cost for CE at the most for each licensee is \$217 per year for the additional cost of 14 credit hours, which is multiplied by 1,006 active renewable licenses to obtain a total of \$218,302 per year for all Pennsylvania licensees, as noted in the answer to question 23.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department randomly audits licensees for compliance with the continuing education (CE) requirements. Increasing the number of CE credits will require Department staff to devote more time to this audit process. However, the Department does not maintain records of the time specifically devoted to the audit process, so an estimate is not available.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because this regulation is required by Act 24 of 2009, there is no way to minimize any paperwork requirements. Reporting forms must be changed to reflect the change in the required number of continuing education credits that a licensee must take. Licensees will still need to maintain certificates of completion for at least 6 years for the additional continuing education.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	\$218,302	\$218,302	\$218,302	\$218,302	\$218,302	\$218,302
Local Government						
State Government						
Total Costs	\$218,302	\$218,302	\$218,302	\$218,302	\$218,302	\$218,302
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (FY 2009-10)	FY -2 (FY 2010-11)	FY -1 (FY 2011-12)	Current FY (Budgeted)
State Board of Landscape Architects	\$69,946.86	\$95,545.49	\$95,234.12	\$106,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) As noted in the answer to question 15, there are 1,006 licensed landscape architects in Pennsylvania. In considering all of the small business thresholds set by NAICS for the businesses in which landscape architects work, it is probable that most landscape architects work in small businesses. However, it is not possible to provide an estimate of the total number of small businesses subject to the regulation.

(b) As stated in the answer to question 19, the additional cost to each licensee for 14 additional credit hours of continuing education is approximately \$217 at the most per year, although this amount can vary greatly depending on the number and type of different courses that a licensee takes to fulfill the additional continuing education requirement.

(c) As discussed in the answer to question 15, while many landscape architects are probably employed in small businesses, only 14% of licensed landscape architects are self-employed, and therefore only approximately 140 licensed landscape architects are known positively to be employed in small businesses. For these 140 licensed landscape architects who are self-employed, at a cost of approximately \$217 per licensee, the total probable effect on impacted small businesses is at least \$30,380 per year.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation because the increase of 14 additional hours of biennial continuing education was mandated by the General Assembly in Act 24 of 2009.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions are required to address any particular group because the increase of 14 additional hours of biennial continuing education was mandated by the General Assembly in Act 24 of 2009.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because this proposed rulemaking incorporates the statutory language of Act 24 of 2009, which adds 14 additional hours of biennial continuing education, no alternative regulatory provisions would accomplish the goal of the regulation. The Board believes that the addition of the “carry over” provision accords more flexibility to licensees and that the regulations as drafted present the least burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Because this proposed rulemaking incorporates the statutory language of Act 24 of 2009, which adds 14 additional hours of biennial continuing education, no regulatory methods were considered that will minimize any adverse impact on small businesses. All landscape architects are currently required to complete 10 hours of continuing education, and deadlines for compliance and reporting requirements will remain the same for the additional 14 hours of continuing education. Because nearly all landscape architects are or work for small businesses, exempting small business from any part of the requirements would be inconsistent with the statute and would be contrary to public safety and welfare.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking is not based upon any scientific data, studies or references.

(29) Include a schedule for review of the regulation including:

- | | |
|--|---|
| A. The date by which the agency must receive public comments:
<u>in the <i>Pennsylvania Bulletin</i></u> | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings
will be held:
<u>quarterly and in 2013 will meet in March, June, August and November.</u> | <u>The Board meets</u> |
| C. The expected date of promulgation of the proposed
regulation as a final-form regulation: | <u>Fall 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>Fall 2013</u> |
| E. The date by which compliance with the final-form
regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other
approvals must be obtained: | <u>May 31, 2015</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally once a calendar quarter. More information can be found on the Board's website (http://www.portal.state.pa.us/portal/server.pt/community/state_board_of_landscape_architects/12511).

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

2013 MAR 21 AM 11:15

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Angela M. Elliott
BY: _____
(DEPUTY ATTORNEY GENERAL)

MAR 06 2013

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Landscape Architects
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6110

DATE OF ADOPTION: _____

BY: *Daniel S. DiMucci*
Daniel S. DiMucci, L.A.

Copy below is approved as to form and legality. Executive or Independent Agencies.

Shawn E. Smith
SHAWN E. SMITH

FEB 11 2013

DATE OF APPROVAL

(Deputy General Counsel
(Chief Counsel,
Independent Agency
Strike inapplicable
title)

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

NOTICE OF PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF LANDSCAPE ARCHITECTS

49 PA. CODE §§ 15.56, 15.72 and 15.80

Continuing Education and Elimination of Registration Without Examination

The State Board of Landscape Architects (Board) proposes amendments to update its regulations regarding continuing education and elimination of registration without examination. As set forth in Annex A, the Board proposes to amend §§ 15.72 and 15.80 (relating to requirement for biennial renewal; and retention of records). The Board also proposes to delete § 15.56 (relating to registration without examination). The Board is making these changes to conform the Board's regulations to the amendments made to the Landscape Architects' Registration Law (act) by the act of July 17, 2009 (P.L. 94, No. 24) (Act 24 of 2009) and make other changes related to these amendments.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

The proposed amendments to §§ 15.56 and 15.72 are mandated by the July 17, 2009, amendments to the act at sections 6(c) and 9.1(b) (63 P.S. §§ 906(c) and 909.1(b)). Furthermore, section 4(9) of the act (63 P.S. § 904(9)) authorizes the Board to adopt, promulgate and enforce rules and regulations not inconsistent with the act as it deems necessary to carry into effect the powers conferred by the act. Finally, section 9.1(a) of the act (63 P.S. § 909.1(a)) requires the Board to adopt, promulgate and enforce regulations consistent with the provisions of the act establishing requirements for continuing education.

Background and Purpose

In 2009, the Pennsylvania General Assembly amended the act to eliminate licensure through an outdated "grandfathering" provision, which previously authorized the Board to register applicants who had practiced landscape architecture for at least 10 or 15 years. In addition, the legislature amended the act to increase the number of hours of required continuing education from 10 to 24 beginning with the license period designated by the Board. After the enactment of Act 24 in 2009, the Board sent two newsletters in 2010 to its licensees apprising them of the increased continuing education requirement and also published a notice on its website. Although the Board had initially anticipated that the increased continuing education requirement would be implemented during the 2011-2013 biennium, to give sufficient notice to all licensees at this time, the Board proposes to designate the 2013-2015 licensure period (from June 1, 2013 through May 31, 2015) as the licensure period in which licensees will first be required to complete the increased number of 24 hours in continuing education, as a condition of renewal in 2015. The Board plans to continue informing its licensees of the increased continuing education requirement through future newsletter articles and a notice on the Board's website. To that end, on November 21, 2012, the Board posted a notice on its website of the increased continuing education requirement to take 14 additional credit hours of continuing education by May 31, 2015 to renew a license. In the notice, the Board informed licensees that this is what

the Board is proposing by this regulation, and that the Board will keep its licensees apprised when the proposed regulation becomes effective.

Description of Amendments

The Board proposes the deletion of § 15.56 (relating to registration without examination) in its entirety, because Act 24 of 2009 deleted the provisions previously contained in section 6(c)(ii) of the act that had permitted a “grandfathering” provision for two types of applicants. First, an applicant with 10 years of active experience as a landscape architect who also was a graduate of an approved institution could have become licensed. Second, an applicant with 15 years of active experience who was not a graduate of an approved institution could have become licensed. The Board had implemented these provisions in § 15.56(a)(1) and (2). They are no longer needed due to the 2009 amendments to the act. Also included in § 15.56(a)(3) is a provision which provides for individuals who have passed the examination in another state. Although not affected by Act 24 of 2009, the Board is also deleting this provision because it is already covered in § 15.57(a) (relating to registration by endorsement). Subsection (b) is also no longer necessary because it deals with the procedure to implement the requirements in subsection (a)(1) and (2). Therefore, it is appropriate to delete the entire section at this time.

Act 24 of 2009 also made two changes in section 9.1(b) of the act, which are incorporated in the amendments at § 15.72(a)(relating to requirement for biennial renewal). The first change is that Act 24 increased the continuing education hours for landscape architects from 10 to 24 during each biennial renewal period. The Board has amended § 15.72(a) to incorporate this change and clarify the continuing education requirement for the current 2011-2013 biennium. The second change is that Act 24 gave the Board the authority to designate when the increased continuing education requirements will be implemented. Although the Board had initially anticipated that the increased continuing education requirement would be implemented for the 2011-2013 biennium, these amendments would now provide that the increased continuing education hours will be required to be completed for the first time during the 2013-2015 biennium (from June 1, 2013 through May 31, 2015) and will continue thereafter. The practical effect of this requirement is that a licensed landscape architect will have to take 14 additional credit hours of continuing education by May 31, 2015, to renew a license. As it has done since 2010, the Board will continue to inform its licensees of the increased continuing education requirements through the Board’s newsletters and through a notice on the Board’s website.

The Board also proposes to amend § 15.72(c) to make it consistent with subsection (a) for licensees who reactivate a lapsed license. Finally, the Board would add a new subsection (d) at § 15.72 to allow a licensee to carry over a maximum of 12 continuing education credits (half of the newly required 24 credits) into the subsequent renewal period. A carry-forward provision would encourage licensees to maximize the continuing education they take and not be deterred from taking continuing education if they do not need it for credit during the current biennial cycle. In other words, if a licensee has already taken the required continuing education credits and then sees an excellent course to take in the final months of the continuing education renewal period, the licensee will receive future credit for taking this course. A positive consequence of the carry-forward provision is also that licensees who took additional continuing education courses during the 2011-2013 biennium in anticipation of the Board’s implementation of Act 24 of 2009 will

now be able to carry forward up to 12 of those credits. For example, if a licensee obtained 22 continuing education credits during the 2011-13 biennial from June 1, 2011 through May 31, 2013, that licensee can carry over the extra 12 continuing education credits into the next renewal period of 2013-2015. In this example, that licensee would only need to obtain 12 additional continuing education credits from June 1, 2013 through May 31, 2015, in order to renew a license.

At §§ 15.80 (a) & (c) (relating to retention of records), the Board proposes to increase from 4 to 6 years the time licensees and course providers are required to retain continuing education documentation. Because the Board audits continuing education after the close of a biennial renewal period, providing this extra time assists the Board in conducting a thorough audit of courses taken in the past. Furthermore, with the provision at § 15.72(d) allowing a licensee to carry forward 12 continuing education credits into the subsequent renewal period, a licensee will be better able to document any credits that are carried forward.

Fiscal Impact

The proposed regulation should not have any major fiscal impact on the Commonwealth, the general public or political subdivisions. Due to the requirement in Act 24 of 2009, the Board's 1,006 active licensees will have to pay for 14 additional continuing education hours of instruction. The Board estimates that the cost to a licensee for the additional continuing education hours is approximately \$434 per biennium (or \$217 per year).

Paperwork Requirements

The regulation will require the Board to change the number of continuing education credits on biennial renewal forms. However, the regulation does not increase paperwork for the general public. The Board's licensees must maintain records of their additional continuing education credits; however, they are not required to complete additional reports.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 21, 2013, the Board submitted a copy of this proposed regulation and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the

public comment period. Comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Louis Lawrence Boyle, Regulatory Unit Counsel, State Board of Landscape Architects, P.O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-6110 Landscape Architecture Continuing Education and Elimination of Registration without Examination, when submitting comments.

Daniel S. DiMucci, L.A.
Board Chairman

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS

EXAMINATIONS

§ 15.56. [Registration without examination](Reserved).

[(a) *Requirements.* An applicant who meets one or more of the following requirements is eligible for registration without examination:

- (1) An individual who possesses 10 years of practical experience in landscape architecture, of a grade and character satisfactory to the Board, and who has graduated from an approved institution.
- (2) An individual who possesses 15 years of practical experience in landscape architecture of a grade and character satisfactory to the Board.
- (3) An individual who has passed the examination in another state with a score required by the Board and who has met the education experience requirements of the act.

(b) *Procedure.*

(1) Prior to issuing a license without examination, the Board will require the applicant to appear before representatives of the Board for an interview. The applicant will be required to submit the following work samples to the representatives during the interview:

- (i) Site and development plans.

- (ii) Specifications and drawings.
 - (iii) Grading and drainage plans.
 - (iv) Layout plans.
 - (v) Planting plans.
 - (vi) Stormwater management plans and calculations.
 - (vii) Site construction details and specifications.
 - (viii) Photographs of completed projects.
 - (ix) Evidence of cost estimating and supervision of construction.
 - (x) A variety of project types including experience with residential subdivision, commercial land developments, environmental projects and park and recreation projects.
- (2) *Submission of work samples.*
- (i) The applicant shall submit original work samples in support of an application for registration without examination, unless the Board agrees to accept photocopies for good cause shown by the applicant.
 - (ii) The work samples will be returned to the applicant at the conclusion of all proceedings related to the application.
- (3) Prior to issuing a license without examination, the Board will review the applicant's qualifications, and by a majority vote approve or disapprove the application.
- (4) If an application has been disapproved, the Board may vote to allow the applicant to take the written examination.]

* * * * *

CONTINUING EDUCATION

§ 15.72. Requirement for biennial renewal.

(a) [As a condition of biennial renewal commencing with the 2003 biennium and continuing thereafter, licensees shall have completed during the preceding biennium 10 clock hours of continuing education in acceptable courses approved under this subchapter.] During each biennial period from the 2001-2003 biennium (from June 1, 2001 through May 31, 2003) and continuing through the 2011-2013 biennium (from June 1, 2011 through May 31, 2013), a licensee shall complete 10 clock hours of continuing education in accordance with this subchapter as a condition of biennial renewal. During each renewal period beginning with the 2013-2015 biennium (from June 1, 2013 through May 31, 2015) and continuing thereafter, a licensee shall complete 24 clock hours of continuing education in accordance with this subchapter as a condition of biennial renewal.

* * * * *

(c) A licensee who wishes to reactivate a lapsed license or who has been on inactive status shall have completed [10] the required number of clock hours of continuing education set forth in subsection (a) in the 2-year period immediately prior to reactivation.

(d) If a licensee exceeds the required number of clock hours of continuing education in any renewal period, the licensee may carry forward a maximum of 12 continuing education clock hours into the subsequent renewal period.

* * * * *

§ 15.80. Retention of records.

(a) The licensee shall retain copies of licensure renewal forms and the certificates, transcripts or other acceptable documentation of completion of the prescribed number of clock hours for [4] 6 years following completion of the course. Records and documentation shall be produced upon demand by the Board or its auditing agents. The Board will utilize a random audit of renewals to determine compliance with the continuing education requirement.

* * * * *

(c) A provider shall retain records for [4] 6 years following the presentation of a course which shall document the successful completion of a course and the number of clock hours granted to every licensee. Copies of transcripts, certificates or other documentation shall be made available to a licensee upon request.

* * * * *



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF LANDSCAPE ARCHITECTS**

**Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 772-8528**

March 21, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Landscape Architects
16A-6110: Continuing Education and Elimination of Registration Without
Examination

Dear Chairman Lutkewitte:

Enclosed is a copy of a proposed rulemaking package of the State Board of Landscape Architects pertaining to Continuing Education and Elimination of Registration Without Examination.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel S. DiMucci".

Daniel S. DiMucci, L.A., Board Chairman
State Board of Landscape Architects

DSD/JJW:aaw

Enclosure

cc: Katie True, Commissioner
Bureau of Professional and Occupational Affairs
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Jeffrey J. Wood, Counsel
State Board of Landscape Architects
State Board of Landscape Architects

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6110

SUBJECT: CONTINUING EDUCATION & ELIMINATION OF REGISTRATION WITHOUT EXAMINATION

AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF LANDSCAPE ARCHITECTS

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2013 MAR 21 AM 11:15

RECEIVED
IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/21/13	<i>Michele Warren</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3-21-13	<i>[Signature]</i>	MAJORITY CHAIR <u>Robert M. Tomlinson</u>
3/21/13	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
3-21-13	<i>Samatha Haen</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)