

Regulatory Analysis Form

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2007 FEB 12 11:00 AM

REVIEW COMMISSION

(1) Agency

Department of State

Bureau of Professional and Occupational Affairs

State Architects Licensure Board

(2) I.D. Number (Governor's Office Use)

16A-417

IRRC Number: 2326

(3) Short Title

Firm Practice

(4) PA Code Cite

49 Pa. Code, §§ 9.161 – 9.164

(5) Agency Contacts & Telephone Numbers

Primary Contact: Roberta L. Silver, Assistant Counsel
State Architects Licensure Board (717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

- ☒ Proposed Rulemaking
☐ Final Order Adopting Regulation
☐ Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The State Architects Licensure Board (Board) proposes to amend 49 Pa. Code §§ 9.161 – 9.164 (relating to professional and corporate practice) by adding the requirements for registration as a limited liability company or limited liability partnership, as set forth in Annex A.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are adopted under Sections 6(a) and 13(j) of the Architects Licensure Law (Act), 63 P.S. §§ 34.6(a), 34.13(j).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Board is required by its Act to adopt regulations requiring any partnership, professional association, professional corporation, business corporation, limited liability company or limited liability partnership practicing architecture in this State to file with the board information concerning its officers, directors, partners, professional association board of governors, beneficial owners, members or managers and such other aspects of its organization as the board deems appropriate. 63 P.S. § 34.13(j).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

In 1998, the Act was amended to include limited liability companies and limited liability partnerships as acceptable firm practice entities. 63 P.S. § 34.13(a). This proposed regulation provides the Board with the opportunity to update the regulations for firm practice registration to reflect the changes in the Act.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

It is important that the Board have control over the registration requirements for architecture firms so that control of the firms is in the hands of licensed architects. Without the registration requirements, any firm could call itself an "architectural firm" and the public would not be protected against faulty design and construction of buildings.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The general public will benefit from the regulation by hiring regulated architectural firms.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board has not identified any group of individuals or entities who will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any architectural firm seeking to practice architecture as a limited liability company or limited liability partnership will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Copies were provided to those interested parties who requested an opportunity to provide input. On March 14, 2002, the Board solicited input from the American Institute of Architects of Pennsylvania and the National Council of Architectural Registration Boards (NCARB). The Board did not receive comments or suggestions.

(17) 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.

N/A

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Board will not incur an increase in administrative costs by implementing the regulation. Each firm must pay a fee of \$50 for initial registration. This cost covers the administrative cost of issuing an initial license.

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(20) 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:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form				
(20b) Provide the past three year expenditure history for programs affected by the regulation.				
Program	FY -3	FY -2	FY -1	Current FY
See attached fee report form.	247,480.26	236,308.10	228,921.41*	247,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered because the Board's enabling statute requires the Board to promulgate regulations requiring registration of architecture firms.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered because the Board's enabling statute requires the Board to promulgate regulations requiring registration of architecture firms.

Regulatory Analysis Form

(24) 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 regulation.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

New York – requires filing of information about an entity as a condition of practice in the state.

New Jersey – same as NY

Delaware – does not require filing of information about an entity as a condition of practice in the state.

Maryland – same as NY

Ohio – same as NY

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

This regulation will have no effect on other regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews regulatory proposals at regularly scheduled bi-monthly public meetings. The meeting dates are listed on the Department of State website. However, the Board has not scheduled public hearings or informational meetings regarding this regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Minimal paperwork and record keeping will be necessary because of the implementation of the regulation for registration as a limited liability company or limited liability partnership.

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

The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Board reviews regulatory proposals at regularly scheduled bi-monthly public meetings.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

#2326

DO NOT WRITE IN THIS SPACE

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

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

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

[Signature]
(DEPUTY ATTORNEY GENERAL)

State Architects Licensure Board
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-417

DATE OF ADOPTION: _____

BY: *[Signature]*
Ann Shepard Houston, President

BY: _____

[Signature]
11/5/02

DATE OF APPROVAL

NOV 26 2002

DATE OF APPROVAL

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

TITLE: President
(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.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE ARCHITECTS LICENSURE BOARD
49 PA. CODE, CHAPTER 9

FIRM PRACTICE

The State Architects Licensure Board (Board) proposes to amend 49 Pa. Code §§ 9.161, 9.162, 9.163 and 9.164, relating to firm practice, by adding the requirements for registration as a limited liability company or limited liability partnership, as set forth in Annex A.

A. Effective Date

The amendment will be effective upon publication of the final form regulation in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are authorized under Sections 6(a) and 13(j) of the Architects Licensure Law (Act) (63 P.S. §§ 34.6(a) and 34.13(j)).

C. Background and Purpose

Prior to 1998, Section 13 of the Act, relating to firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. 63 P.S. § 34.13(a) (West 1996). In 1998, Section 13 was amended to include limited liability companies and limited liability partnerships as acceptable entities. 63 P.S. § 34.13(a). The Board's regulations have not been updated to reflect the changes in the Act relating to firm practice. Hence, this proposed regulation.

D. Description of Amendment

The Board proposes to amend § 9.161, by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture, and by requiring compliance with 15 Pa.C.S. Ch. 89 (relating to limited liability companies) and 15 Pa.C.S. Ch. 82 (relating to limited liability partnerships).

The amendment to § 9.162(2) would clarify that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company, by mirroring the requirements set forth in the Act and by adding the additional requirement that at least one member or manager of the company must be a licensee of the Board.

Section 9.163 requires that the applicant seeking registration for an entity permitted to practice architecture in the Commonwealth must complete a formal application provided by the Board.

Section 9.164 adds limited liability companies and limited liability partnerships to the list of entities which may be wholly owned by only two persons.

E. Compliance with Executive Order 1996-1

In compliance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input from the American Institute of Architects of Pennsylvania and the National Council of Architect Registration Boards. The Board reviewed the proposed regulation and considered its purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate any legal, accounting, reporting or other paperwork requirements.

G. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Pursuant to Section 5(a) of the Regulatory Review Act, (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on January 27, 2003, to the Independent Regulatory Review Commission (IRRC) the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC, and HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the SCP/PLC and HPLC review period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for

review of objections by the Board, the General Assembly, and the Governor prior to publication of the regulations.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Dorna Thorpe, State Architects Licensure Board, 116 Pine Street, P.O. Box 2649, Harrisburg, PA 17105-2649 (dothorpe@state.pa.us) within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Ann Shepard Houston, President
State Architects Licensure Board

ANNEX A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD**

PROFESSIONAL AND CORPORATE PRACTICE

§ 9.161. Compliance with applicable statutes.

An architect or group of architects may elect to practice architecture professionally as a sole proprietorship, a partnership, a professional association, a professional corporation, a limited liability company, a limited liability partnership or a business corporation. A practice so elected shall be formed and conducted under the act and this chapter. In addition, the practice shall comply as follows:

* * *

(6) In the case of a limited liability company, with 15 Pa.C.S. Ch. 89 (relating to limited liability companies).

(7) In the case of a limited liability partnership, with 15 Pa.C.S. Ch. 82 (relating to limited liability partnerships).

[6] (8) The business form chosen by an architect may not affect the statutes of the Commonwealth applicable to the professional relationship or the contract, tort or other legal rights, duties and liabilities between the architect and the person receiving architectural services.

§ 9.162. Firm Practice.

The practice of architecture may be conducted in one of the following business forms:

* * *

(2) A partnership (general or limited liability) or professional association, when the following exist:

* * *

(5) A limited liability company, when the following exist:

- (i) At least two-thirds of the members if managed by members or at least two-thirds of the managers if managed by managers are licensed under the laws of any state to practice architecture, engineering or landscape architecture.
- (ii) At least one-third of the members if managed by members or at least one-third of the managers if managed by managers are licensed under the laws of any state to practice architecture.
- (iii) At least one member or manager is a licensee of the Board.
- (iv) At least two-thirds of all classes of voting membership at any one time shall be owned by an individual or individuals licensed under the laws of any state to practice architecture, engineering or landscape architecture.
- (v) At least one-third of all classes of voting membership at any one time shall be owned by an individual or individuals licensed under the laws of any state to practice architecture.

§ 9.163. Prior Approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified at § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by submitting a completed application on forms provided by the Board along with [filing] the following documents [with the Board]:

* * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, limited liability company, limited liability partnership or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.



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

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3397

February 12, 2003

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: ^{Proposed} Final Regulation
State Architects Licensure Board
16A-417:Firm Practice

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Architects Licensure Board pertaining to Firm Practice.

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

Sincerely,

Ann Shephard Houston, RA, President
State Architects Licensure Board

ASH/RS:law

Enclosure

cc: W. Raymond Ketner, Acting Deputy Commissioner
Bureau of Professional and Occupational Affairs
John T. Henderson, Jr., Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Roberta Silver, Counsel
State Architects Licensure Board
State Architects Licensure Board


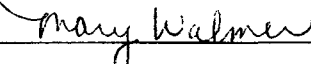
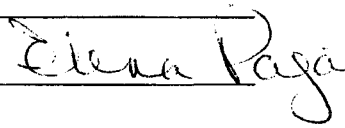

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-417
SUBJECT: State Architects Licensure Board - Firm Practice
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-12-03		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
<hr/>		
2/12/03		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
<hr/>		
2/12/03		INDEPENDENT REGULATORY REVIEW COMMISSION
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		ATTORNEY GENERAL
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2/12/03		LEGISLATIVE REFERENCE BUREAU

November 26, 2002