

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF LANDSCAPE ARCHITECTS [49 PA. CODE CH. 15] Continuing Education

The State Board of Landscape Architects (Board) amends §§ 15.12 and 15.63 and adds §§ 15.71—15.82, to read as set forth in Annex A. The amendments are designed to implement continuing education requirements as a condition for license renewal.

A. *Effective date*

The amendments will be effective upon publication in the *Pennsylvania Bulletin* and continuing education requirements will apply to the May 31, 2003, license renewal.

B. *Statutory Authority*

The amendments are authorized under sections 5 and 9.1 of the Landscape Architects' Registration Law (act) (63 P. S. §§ 905 and 909.1).

C. *Background and Purpose*

The amendments are designed to implement language added to the act providing for continuing education requirements as a condition of license renewal.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 28 Pa.B. 3414 (July 18, 1998). The Board received comments from the Pennsylvania Society of Land Surveyors (PSLS), the American Society of Landscape Architects (ASLA), the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board considered all of the comments and recommendations received in preparing final rulemaking.

Most of the comments received related to the clarity and accuracy of the regulatory language. The Board accordingly, made numerous revisions in final rulemaking to more clearly and accurately define terms and procedures. For example, the regulations now refers consistently to the defined term "clock hour" as suggested by ASLA and IRRC. Similarly, the Board has revised its use of terminology referencing continuing education providers and has added several definitions suggested by IRRC.

The PSLS noted that it, as the only professional organization in this Commonwealth providing continuing education for land surveyors, is not included in § 15.76 of the proposal relating to preapproved sources of continuing education courses. The Board has determined that PSLS should be included in the list of approved providers.

IRRC expressed concern about the definition of "office management" wherein computer applications relating to the practice of landscape architecture may be excluded from continuing education credit. The Board has revised the definition. Similarly, IRRC expressed concerns about satellite seminars and electronic transmissions and spe-

cifically questioned, as did the ASLA, the appropriateness of permitting no more than 5 clock hours' credit per biennium from these sources. The Board notes that the 5-hour limitation, as proposed, represents fully one-half the total amount of the continuing education required for biennial renewal. The Board believes that considerable value is derived from professional and personal interactions which are obtainable only in the company of colleagues. For these reasons, the provision is retained in final rulemaking.

Likewise, IRRC questioned the role of a moderator in satellite seminars viewed at other sites by electronic transmission as outlined in the proposed rulemaking in § 15.739(c)(1). The Board's initial thinking involved the concept that continuing education courses should be more challenging than the passive viewing of a television video and should include the intellectual give-and-take of professional discussions. Upon consideration of IRRC's comments and in view of the breadth of variety in courses available to licensees, the Board will not insist that a moderator be available for all satellite courses. Instead, it will require providers of satellite seminars and electronic presentations to document affiliation with an organization acceptable to the Board as a continuing education course provider, such as an educational institution, or provide a means of evaluating licensees' successful completion of the course. The new requirements have been inserted in § 15.75(e).

IRRC also questioned the propriety of requiring reapproval for each course on a biennial basis. The Board agrees that biennial reapproval is not necessary for providers who do not modify their course presentations over the course of the biennium and has deleted the term "per biennium" from § 15.74(a). Language has been added in § 15.75(d) requiring providers to submit course modifications to the Board as they occur. Significant modifications resulting in a change in the goals of the course, for example, will require submission of a new application for Board approval.

The ASLA questioned whether the Board will be able to approve continuing education courses in a timely fashion. The Board is satisfied that it can and will do so.

IRRC has queried whether the Board intends that approval be sought for providers or courses, or both, and suggests that certain provisions may be redundant and burdensome. A review of section 9.1 of the act reveals that courses, not providers, are required to be approved. Accordingly, the Board has made numerous editorial and language changes throughout the final rulemaking to provide that courses will be approved by the Board, rather than providers. Revisions have been made in §§ 15.12, 15.71 and 15.73—15.78. The Board believes that the new language will provide the clarity and accuracy missing in proposed rulemaking with regard to the statutory requirements.

With respect to IRRC's recommendation that the Board delete language in § 15.75 relating to approval of instructors by a provider or institution in favor of identifying specific criteria in the regulation for the approval of an instructor, the Board believes that the language in the proposed rulemaking is adequate to comply with statutory language and notes that § 15.74(c)(4) requires instructors to be identified on course approval application forms. The Board is not expert in educational credentialing and is satisfied that instructor credentialing effectually

ated by accredited educational institutions is more than sufficient to satisfy legislative criteria.

The Board agrees with IRRC's comment that individual licensees who seek approval of courses not approved under § 15.74 or § 15.75 had, under proposed regulatory language, a greater burden of documentation than licensees who restrict their studies to Board-approved courses. Accordingly, it has revised § 15.77(d) to merely require licensees who obtain personal approval for a course not already approved to comply with the recordkeeping and documentation rules required of all licensees.

IRRC has also suggested that the Board revise proposed requirements in § 15.80(a) (relating to retention of records). IRRC suggested that the Board tie the 4-year retention of record requirement to the current and immediately preceding biennial time frame. The Board declines to make this change due to the need for administrative flexibility in the audit procedure utilized by Bureau of Professional and Occupational Affairs licensing boards.

In a related matter, the Board agrees with the HPLC's suggestion that providers be required to retain records of continuing education hours awarded to licensees under the auspices of their programs and had inserted that requirement in § 15.80. Although the Board has no desire to create unnecessary recordkeeping standards, it considers this suggestion helpful to licensees who may be unable to document their credit hours in any other manner through no fault of their own. Licensees would have the option of returning to their continuing education provider for copies of documentation acceptable to the Board.

The HPLC and IRRC expressed due process concerns with § 15.78 which permits the Board to withdraw approval of program sponsors without a due process hearing. The Board amended the language in § 15.78 to clarify that courses, not providers, will be approved, and that any withdrawal of approval will be for a particular course, not for a provider. The Board chose not to change the language of § 15.78 to include notice and opportunity for hearing prior to course disapproval, as it felt that it would be well served by a less formal and burdensome process. The language of § 15.74(c) permits providers to submit clarifications or revisions, or to submit new applications in some cases should the need arise, to meet Board requirements.

The Board submitted the rulemaking in final form on December 1, 1999. The rulemaking was approved by the HPLC on December 7, 1999. Following discussions with the analysts for IRRC, the Board withdrew the rulemaking to replace § 15.78 entirely. The new language of § 15.78 provides that the Board may withdraw course approval following notice and hearing. The rulemaking was withdrawn to insert this provision for a hearing; the Board also corrected minor errors in two other sections. In § 15.72, the word clock was inserted before the word hours, and in § 15.76(5), the National Council of Examiners for Engineering and Land Surveying, an organization of licensing boards which does not offer educational courses, was replaced by the National Society of Professional Engineers and its affiliates.

E. Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1, the Board has sought in final rulemaking to achieve clear and, when possible, nontechnical language. Likewise, it has reviewed and incorporated many of the comments received on the proposed rulemaking from various individuals and organizations representing the regulated community as well as the HPLC and IRRC.

F. Fiscal Impact and Paperwork Requirements

Continuing education program providers will be required to complete applications for approval as well as to maintain records of licensees completing courses. Licensees will be required to maintain records of continuing education completed. The Board will process applications for which a fee will be charged. The fees for course approval have increased since the time the fees were calculated in 1996 for the proposed rulemaking. This increase reflects more current figures for costs of Board staff time and administrative overhead.

G. Sunset Date

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

H. Regulatory Review

In preparing these final-form regulations, the Board considered the comments received from IRRC, the Committees and the public.

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 1, 1999, the Board submitted the text of these final-form regulations together with the Board's responses to comments received on proposed rulemaking, a copy of the notice of proposed rulemaking published at 28 Pa.B. 3414, and other required documentation, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

The final-form regulations as originally submitted were approved by the House Committee on December 7, 1999.

On December 30, 1999, the Board withdrew the final-form regulations for the purpose of replacing § 15.78 with new language.

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on July 11, 2000, the Board resubmitted the modified text of these final-form regulations together with the Board's responses to comments received on proposed rulemaking, a copy of the notice of proposed rulemaking published at 28 Pa.B. 3414, and other required documentation, to the IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

This final-form regulation was deemed approved by the House and Senate Committee on July 31, 2000. IRRC met on August 10, 2000, and approved the amendments in accordance with section 5(e) of the Regulatory Review Act.

I. Public Comment

Interested persons may obtain information regarding the amendments by writing to State Board of Landscape Architects, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649.

J. Contact Person

Further information may be obtained by contacting Shirley Klinger, Administrative Assistant, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-4865.

K. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 28 Pa.B. 3414.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this preamble.

L. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 15, are amended by amending §§ 15.12 and 15.63 and by adding §§ 15.71—15.81, to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the Pennsylvania Bulletin.

JAMES W. PASHEK, L.A.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 4480 (August 26, 2000).)

Fiscal Note: Fiscal Note 16A-612 remains valid for the final adoption of the subject regulations.

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

APPLICATION PROCEDURES

§ 15.12. Fees.

Following is the schedule of fees charged by the Board:

- (1) Application for examination \$40
(2) Certification of licensure or scores \$15
(3) Fee per section of licensing examination:
(i) June 1999:
Section A \$40
Section B \$75

- Section C \$150
Section D \$125
Section E \$150

(ii) December 1999:

- Section A not administered
Section B not administered
Section C \$160
Section D \$130
Section E \$160

(iii) June 2000:

- Section A \$40
Section B \$80
Section C \$160
Section D \$130
Section E \$160

(4) Administration of examination for one section or more \$45

(5) Application for licensure without examination:

- (i) With proof of licensure \$45
(ii) Without proof of licensure \$255

(6) Duplicate certificate fee \$5

(7) Biennial registration fee \$125

(8) Provider application for continuing education course approval under § 15.74 (relating to approval of continuing education courses) \$100

(9) Licensee application for continuing education course approval under § 15.77 (relating to licensee application for approval of continuing education courses) \$40 (per clock hour)

PROFESSIONAL OBLIGATIONS, COMPETENCE AND CONDUCT

§ 15.63. Misconduct.

A landscape architect who is found guilty by the Board of misconduct in the practice of landscape architecture is subject to disciplinary action under section 4(4) of the act (63 P. S. § 904(4)). Misconduct in the practice of landscape architecture includes the following:

(1) Failing to exercise good faith in the performance of landscape architecture as an agent or employee of another.

(2) Knowingly making or issuing a misleading, deceptive or fraudulent statement in regard to an aspect of his or another landscape architect's practice.

(3) Performing landscape architectural work which the landscape architect knows or has reason to know that he is not competent to perform.

(4) Delegating a professional responsibility to a person when the landscape architect knows or has reason to know that the person is not qualified by training, experience, license or certification to assume the responsibility.

(5) Knowingly aiding or abetting a person who is not licensed and registered, or exempt from licensure and registration requirements in performing a landscape architectural work.

(6) Knowingly aiding or abetting a person who is not qualified by training or experience in seeking licensure to practice landscape architecture.

(7) Misrepresenting or concealing a material fact in obtaining a license to practice landscape architecture or its reinstatement.

(8) Using or permitting the use of the professional seal on a document when the landscape architect did not actually prepare the document or supervise its preparation.

(9) Violating the act or this chapter.

(10) Failure to furnish evidence of completion of continuing education as requested by the Board or the furnishing of false or fraudulent information pertaining to the completion of continuing education.

CONTINUING EDUCATION

§ 15.71. Definitions.

The following words and terms, when used in this section and §§ 15.72—15.81 (relating to continuing education), have the following meanings, unless the context clearly indicates otherwise:

Biennium—The period from June 1 of an odd-numbered year to May 31 of the next odd-numbered year.

Clock hour—Fifty minutes of instruction or participation in an approved course, not including keynote speeches, luncheon speeches or breaks and marketing or product presentations.

Electronic presentation—Transmittal of information by means of applications such as computer technology, telecommunications, television, and the like.

Office management—Activity supportive of administrative or business activities and not related to professional practice, including bookkeeping, business development, finance, marketing, taxes, human resources and the use of office equipment.

Provider—A person, agency, organization, institution or association approved by the Board to offer a continuing education organized course.

Satellite seminar—A course provided at a central location and viewed at remote sites by electronic transmission.

§ 15.72. Requirement for biennial renewal.

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.

§ 15.73. Acceptable continuing education courses.

(a) Only courses approved by the Board will be accepted for continuing education credit. The licensee shall be responsible for ascertaining the approved status of the course before undertaking a continuing education activity.

(b) Acceptable subject matter for continuing education courses is limited to courses pertaining to the enhancement of the landscape architect's professional skills. The Board will not approve courses in office management.

(c) A maximum of 5 clock hours per biennium will be accepted in courses consisting of satellite seminars and electronic presentations.

§ 15.74. Approval of continuing education courses.

(a) A provider seeking approval to offer a continuing education course, other than a provider identified in § 15.76 (relating to sources of continuing education courses), shall submit an application, accompanied by the fee in § 15.12 (relating to fees), at least 120 days before

the scheduled presentation date of the course. The Board will conduct a final review of an application, if required, at its next regularly scheduled meeting.

(b) The application shall include the following information:

(1) The full name and address of the provider.

(2) The title of the course and subjects covered.

(3) The date and location of the course.

(4) The names, titles, affiliations and degrees of instructors.

(5) The schedule of the course. A detailed syllabus and time allocated for each portion of the course.

(6) A breakdown of the number of clock hours for each portion of the course scheduled.

(7) The method of certifying attendance.

(8) The course coordinator.

(9) Evidence of compliance with the standards in § 15.75 (relating to standards for courses).

(c) Disapprovals of courses will include statements setting forth the reasons for disapproval. Providers may submit new applications which document alterations made to meet Board requirements.

§ 15.75. Responsibilities of course providers.

(a) Providers shall supply adequate facilities that provide physical access to licensees in conformance with applicable law except for satellite seminars and electronic presentations.

(b) Providers shall insure that instructors are qualified.

(c) Providers seeking Board approval of a course shall present evidence that the course material and subject matter will enhance landscape architects' professional knowledge and practice skills.

(d) Providers shall inform the Board of material modifications in courses before modifications are implemented. Approval may be withdrawn if changes do not comply with the act and §§ 15.71—15.74, 15.76—15.81 and this section.

(e) Providers of satellite seminars or electronic presentations shall document affiliation with an educational institution or other entity identified in § 15.76 (relating to sources of continuing education courses) or provide a mechanism to test or evaluate the licensee's successful completion of the course.

§ 15.76. Sources of continuing education courses.

The Board finds the courses provided by the following entities meet the standards of the act and this subchapter:

(1) The American Society of Landscape Architects and its affiliates.

(2) The American Nurserymen's Association and its affiliates.

(3) The American Planning Association and its affiliates.

(4) The American Institute of Architects and its affiliates.

(5) The National Society of Professional Engineers and its affiliates.

(6) The National Recreation and Parks Association and its affiliates.

- (7) The Pennsylvania Society of Land Surveyors.
- (8) The Urban Land Institute.
- (9) Accredited colleges and universities which offer courses in landscape architecture or related fields.
- (10) Agencies of the Commonwealth and Federal government offering training programs in landscape architecture and its related fields.

§ 15.77. Licensee application for approval of continuing education courses.

- (a) A licensee may apply for approval of a course not approved by the Board under § 15.74 or § 15.76 (relating to approval of continuing education courses; and sources of continuing education courses) on a one-time basis per biennium. A licensee shall submit an application for approval and the required fee at least 60 days prior to the date the course commences.
- (b) The application shall include the supporting documentation required by § 15.74(b).

§ 15.78. Withdrawal of approval of a course.

The Board may, following notice and hearing under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), withdraw the approval of an approved course if the Board finds one or more of the following:

- (1) The Board's approval of the course was acquired by misrepresentation.
- (2) The provider fails to maintain compliance with § 15.75 (relating to standards for providers).
- (3) The provider refuses to allow reasonable inspection or to supply information on request of the Board or its representatives.
- (4) The provider and the course otherwise do not comply with this chapter.

§ 15.79. Reporting of hours spent in continuing education.

An applicant for license renewal shall provide the following information for each course attended on Board-provided forms:

- (1) The date attended.
- (2) The clock hours claimed.
- (3) The title of course.
- (4) The course provider.
- (5) The location of course.

§ 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 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.
- (b) Acceptable documentation of completion shall consist of a document prepared by the provider indicating continuing education course titles, completion dates and clock hours granted.

- (c) A provider shall retain records for 4 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.

§ 15.81. Waiver.

The Board may waive all or part of the continuing education requirement for biennial renewal upon written documentation by a licensee of illness, emergency or hardship. A waiver request will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

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