

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Board of Landscape Architect Examiners

Regulation/Package Title: Five-Year Rule Review

Rule Number(s): 4703:1-1-03; 4703:1-3-01; 4703:1-3-02; 4703:1-3-03; 4703:1-3-08

Date: August 22, 2012

Rule Type:

- New
 Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

The Ohio Board of Landscape Architect Examiners is proposing the following rule actions:

4703:1-1-03 Certificates – Proposed No Change

4703: 1-3-01 Seal requirement. – Proposed No Change

4703: 1-3-02 Landscape architecture firms – Proposed No Change

4703:1-3-03 Firm names – Proposed No Change

4703: 1-3-08 Prohibition of improper contacts– Proposed No Change

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2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The Board is authorized to promulgate regulations by Ohio Revised Code sections 119.03 and 4703.33

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The fundamental function for any form of professional regulation is to protect the public health, safety, and welfare. Licensure is also a critical state function for protecting the public from unqualified or incompetent individuals who engage in professional practice.

Licensure of Landscape Architects occurs after an individual has met three basic requirements: an accredited professional degree in landscape architecture, completion of a three year training requirement, and completion of a four-part written examination.

Licensing of Landscape Architecture firms ensures the services provided are supervised by an Ohio-registered Landscape Architect.

Licensing provides parity with the other Ohio-licensed design professions (Architecture and Engineering) by lifting restraints on competition, within overlapping markets, that are often created when some, but not all, of the design professions are licensed.

The profession strongly supports the licensing and regulation of the practice. The Board is composed of three registered Landscape Architects, one allied professional (from architecture or engineering) and one public member. Thus, the regulations are driven by experienced design professionals.

Landscape Architects are trained to work on community master plans, site planning, highway design, pedestrian walkways, wetland construction and mitigation, park and trail systems, erosion control, historic preservation, and mine reclamation.

Many of these elements can produce an adverse impact on the public if the practitioner is not properly educated, trained, and tested. Conversely, many of these elements can produce

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positive impact on the community if practiced by a competent professional who has met the standards for licensure.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

A measurable outcome is available and is based upon the number of licenses issued annually and the revenue generated by licensing fees.

This information is available in the Legislative Service Commission's annual [Occupational Licensing and Regulatory Board Report](#). As required by Ohio Revised Code section 103.13(H), this annual report examines the extent to which Ohio's various occupational licensing and regulatory boards and commissions are self-supporting.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The rules, along with supporting documentation, were sent via email to all Ohio-registered Landscape Architects and Landscape Architecture firms on July 17, 2012. The documents were also made available on the Board's website at the same time.

The six comments received were discussed and considered at the Board's August 17, 2012 meeting.

A representative of the Ohio chapter of the professional association, the Ohio Chapter, American Society of Landscape Architects (OCASLA), attends all Board meetings and provides input to the Board. The representative also serves as a liaison between the OCASLA's Executive Committee and the Board.

OCASLA communicate with it membership via their website and newsletters provides their membership additional opportunity to provide input on the Board's proposed policies.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Three of the six comments received indicated that the respondent had no issues with the current rules.

Two comments were received from out of state firms. The Board felt these comments may indicate a lack of familiarity with and/or misunderstanding of Ohio's rules, rather than an objection to the rules.

One of these comments concerned the use of the names of deceased and retired owners of firms. It was the Board's opinion that the writer misread the actual wording of the rule, as their suggestion is already part of the rule.

Another commenter stated that the ownership requirement precluded his firm from conducting business in the state of Ohio because a majority of his firm's owners were not registered design professionals. However, firms in this situation generally form a subsidiary corporation that does meet the requirements.

Previous discussions with the profession have indicated a lack of support for a dilution of Ohio's ownership requirements. In addition, the Board has taken several steps in recent years to make the ownership requirements less restrictive. Ohio's current requirements are less stringent than many states.

The sixth comment suggested adding the date a document was seal as a deterrent to fraud. The Board noted the date is already supplied at the time the plans are filed.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data does not exist for these rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

There are no alternative regulations available. The Board follows Model Law and Regulations as agreed upon by the member boards of the Council of Landscape Architectural Registration Boards (CLARB). CLARB Model Laws and Regulations benefit the profession by creating uniform regulations across the country. This benefits the profession by creating a predictable, easy to understand set of policies.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

A performance-based regulation was not considered or available, as these are not outcome-based regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other agencies which regulate the profession of Landscape Architecture.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

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The Board will utilize its website, newsletter and email list serve to notify licensees and firms of the proposed rule filings.

Notices are also sent to the professional association, the Ohio Chapter of the American Society of Landscape Architects, for dissemination to its membership.

Copies of all of the laws and rules governing the profession of Landscape Architecture are available 24/7 on the Board's website.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community:

The affected businesses are registered landscape architects and landscape architecture firms.

Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The ownership requirements require that a majority of owners, members, partners or shareholders be registered design professionals. A registered design professional is defined as a landscape architect, architect, engineer or professional surveyor whose work is primarily related to the built environment. In some states, this includes registered geologists or interior designers. The ownership requirement may preclude a very small number of firms from qualifying, but firms in this situation generally restructure their ownership or form a subsidiary corporation that does meet the requirements.

In 2008, the law was amended in order to simplify compliance. The law was expanded to include ESOPs as a form of ownership. The same change removed the requirement that a landscape architect be a member of the corporation's board of directors and allows the registered professionals to be registered in any state, not just Ohio. These changes have increased the number of firms significantly (see below).

b. Quantify the expected adverse impact from the regulation.

There are currently a total of 99 Landscape Architecture firms registered in Ohio. This is a significant increase since the law was modified in 2008 when there were 52 registered Landscape Architecture firms. There are currently another 44 (compared

to 22 in 2008) firms holding dual registration to provide both Architecture and Landscape Architecture services in Ohio.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Board has taken steps in recent years to simplify the ownership requirements. In addition, the profession actively supports regulation of firms and individual Landscape Architects.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

A license is required to practice Landscape Architecture in all 50 states; alternative means of compliance is not allowed within the Ohio Revised Code.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Board's investigator advises the Board if an offense is a paperwork or first-time offense, in which case fines and penalties are waived. The Board has granted the Executive Director the authority to review and approve applications. This reduces delays and allows firms to begin work immediately. The majority of applications are approved the same day they are received. The Executive Director's actions are then ratified by the Board at their next meeting.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board's website (www.arc.ohio.gov) explains all licensing requirements and procedures. The Board's laws and rules are available on the website. Applications, and instructions for completion, are available 24/7 on the website. The Board's staff provides personalized service and is also available to answer questions via phone, email or in person.