

Clearinghouse Rule 12-039

STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : NOTICE OF PUBLIC HEARING
EXAMINING BOARD OF ARCHITECTS, : RULE-MAKING PROPOSAL
LANDSCAPE ARCHITECTS, : A-E 8, 9
PROFESSIONAL ENGINEERS, : (CR 12-)
DESIGNERS AND LAND SURVEYORS :

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Jt. Board) by ss. 227.11 (2 (a) and 443.015 (2), Wis. Stats., and interpreting ss. 443.01 (3r), 443.02 (2) and (3), 443.035, 443.09 (4m) and (5), 443.10 (2) (c), Wis. Stats., the Landscape Architecture Section of the Joint Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. A-E 8.07 (1) and (2), 9.05 (1) (a), and 9.06 (3), and to create s. 9.03 (1) (b), relating to Landscape Architect licensure and practice.

Hearing Date, Time and Location

Date: October 18, 2012
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
Room 121
Madison, Wisconsin 53703

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Analysis prepared by the Wisconsin Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 443.01 (3r), 443.02 (2) and (3), 443.035, 443.09 (4m) and (5), 443.10 (2) (c), Stats.

Statutory authority:

Sections 227.11 (2 (a), 443.015 (2), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., authorizes state agencies to promulgate rules interpreting the statutes they enforce or administer, when deemed necessary to effectuate the purpose of those statutes. Section 443.015 (2), Stats., authorizes the Landscape Architect Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Joint Board) to promulgate rules governing the practice of landscape architecture.

Related statute or rule:

No statutes or administrative rules beyond those referenced above are related to this proposed rule-making.

Plain language analysis:

The rule amendments in this proposal are based primarily on statutory changes made in 2009 Wisconsin Act 123, but include changes effected by 2009 Wisconsin Act 350 and 2011 Wisconsin Act 146 as well. The proposal also makes a clarification in and removes obsolete date references from the rules regarding the registration requirements for landscape architects.

Before the effective date of Act 123, no Wisconsin statute prohibited a person not licensed as a landscape architect from offering to, or engaging in, the practice of landscape architecture. Former s. 443.02 (5), Stats., only prohibited a person not so licensed or registered from using the title "landscape architect" or any other such reference in representing his or her professional capacity. Act 123, which took effect February 26, 2010, repealed s. 443.02 (5), Stats., and amended subs. (2) and (3) of the same statute to include, respectively, a prohibition against the practice of, or offer to, practice landscape architecture without a license or registration in that profession. The proposed updates to A-E 8.07, addressing unauthorized professional practice, are based on these statutory amendments.

2009 Wisconsin Act 350 became effective on May 28, 2010. Act 350 repealed s. 443.09 (6), Stats., which had allowed applicants for registration as an architect, landscape architect, or professional engineer who failed the relevant examination to request review thereof within one year of the date it was taken. Act 350 thus requires the repeal of A-E rules provisions related to examination review for all such applicants, including those provisions regarding registration as a landscape architect found in A-E 9.05 (6).

2011 Wisconsin Act 146, effective May 4, 2012, transferred full authority for the content of the landscape architect licensure examination from the Joint Board to the Landscape Architect Section in s. 443.09 (4m), Stats. The transfer of statutory authority prompts the proposed

substitution of “landscape architecture section” for “examining board” in A-E 9.05 (1) (a). The same statutory change obviated the need for a separate examination on barrier design, militating the repeal of A-E 9.05 (1) (b).

Aside from updates based on statutory changes, the Section seeks to clarify A-E 9.03 (1), regarding the types of work that will satisfy the landscape architect experience requirements set forth in s. 443.035 (1), Stats. The proposed renumbering of A-E 9.03 (1) to 9.03 (1) (a) and the creation of A-E 9.03 (1) (b) makes clear that for landscape architect licensure applicants who follow the registration path described in s. 443.035 (1) (a), Stats., work experience acquired before completion of the educational programs specified therein will not count toward the licensure experience requirement. Lastly, this proposal removes the references to December 31, 1995 in A-E 9.05 (1) (a) and (b), as they are no longer necessary.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Landscape Architecture Act of 1989, incorporated into the Illinois Compiled Statutes (ILCS) at 225 ILCS 315, prohibits any person from representing him or herself as a landscape architect, or from using “landscape architect” or “landscape architecture” in a title associated with his or her name unless licensed by the Department of Financial and Professional Regulation (DFPR). 225 ILCS 315/4. However, any person may engage in the practice of landscape architecture so long as he or she complies with the title prohibition. 225 ILCS 315/5.

DFPR is required to consult the Illinois Landscape Architect Registration Board when promulgating rules regarding the licensure and practice of landscape architects. 225 ILCS 315/8 (c). Although the DFPR may seek the expert knowledge of the Board on any matter related to the administration of the 1989 Act, it retains final authority over all such matters, which includes content of examination for initial licensure. 225 ILCS 315/8 (b) and (d), 315/11 (a). The statutes do not address examination review for applicants who fail the required examination.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1342&ChapterID=24>

DFPR’s administrative rules provide that applicants for licensure as a landscape architect must pass the Landscape Architect Registration Examination of the Council of Landscape Architectural Registration Boards (CLARB). 68 Ill. Reg. 1275.50 (a). The Illinois rules also do not address examination review for applicants who fail the required examination.

<http://www.ilga.gov/commission/jcar/admincode/068/06801275sections.html>

Iowa:

The Iowa statutes, referred to as the Iowa Code, prohibit any person from engaging in the practice of landscape architecture, or using a title containing those words or any variation thereof to represent him or herself, without a license issued by the Iowa Landscape Architectural Examining Board. XIII Iowa Code 544B.2. The Board, which is part of the Iowa Department of Commerce, has rule-making authority for all matters related to landscape architect licensure, including examination content and administration. XIII Iowa Code 544B.5., B.8. An applicant who fails the required examination may submit a written request for information concerning his or her grade or questions answered incorrectly, unless a uniform, standardized examination is used. In that event, the Board is only required to provide the examination grade and such other information as is made available to the Board. XIII Iowa Code 544B.8.

<http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>

The rules of the Iowa Landscape Architectural Examining Board provide that, within 30 days of notification of a failing grade, the landscape architect examinant may submit a written request to the Board to review his or her own graded examination. 193D—2.5(3)a., Iowa Admin. Code.

<http://www.legis.state.ia.us/asp/ACODocs/DOCS/08-08-2012.193D.pdf>

Michigan:

Under Michigan’s statutes, known as the Michigan Compiled Laws (MCL), no person may engage in the practice of landscape architecture unless duly licensed in that profession. *See* MCL ss. 339.2201 (a) and (b), and 339.2202 (3). Additionally, no person may use the title “landscape architect” or use the phrase “landscape architecture” in representing him or herself unless that person is so licensed. MCL s. 339.2211.

The Department of Licensing and Regulatory Affairs (LARA) has authority for the examination content and licensure of landscape architects. MCL s. 339.2204. The Michigan statutes do not address examination review for applicants who fail the required examination.

<http://legislature.mi.gov/doc.aspx?mcl-299-1980-22>

LARA requires an applicant for landscape architect licensure to pass either the uniform national examination of CLARB or a state licensing examination deemed by LARA to be equivalent thereto. R 339.19025 (1), Mich. Admin. Code.¹ The Michigan rules also do not address examination review for applicants who fail the required examination.

http://www7.dleg.state.mi.us/orr/Files/AdminCode/105_23_AdminCode.pdf

Minnesota:

¹ It should be noted here that, information received through e-mail contact on August 7, 2012 with LARA’s Bureau of Commercial Services at bcslic@michigan.gov indicates that the Michigan Board of Landscape Architects, referred to both in the Michigan statutes and on LARA’s website, was “dissolved several years ago.” That information was confirmed through a follow-up telephone call on August 8, 2012 to the author of the e-mail, a Licensing Analyst with the telephone number (517) 241-8720.

In Minnesota, no person may practice, offer to practice, or use a title representing the professional capacity to practice, landscape architecture unless licensed by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design. Sections 326.02 (1), (4a), 326.06, Minn. Stats. The Board has rule-making authority for all aspects of the regulation of its associated professions, including licensure examination content. Section 326.06, Minn. Stats. The Minnesota statutes do not address examination review or re-examination for applicants who fail the required examination.

<https://www.revisor.mn.gov/statutes/?id=326>

By administrative rule, the Minnesota Board requires applicants for licensure as a landscape architect to pass the Landscape Architect Registration Examination administered by CLARB. Sections 1800.0800 E.; 1800.1500, Subp. 1.; 1800.1700, Subp. 1.; Minn. Admin. Code. While the Minnesota rules allow an applicant who fails the required licensing examination to retake it for another fee, s. 1800.0900, Subp. 4., they do not address review of failed examinations.

<https://www.revisor.mn.gov/rules/?id=1800>

Summary of factual data and analytical methodologies:

No factual data was required for the rule-making in this proposal, as the changes were necessitated by statute. For that reason, no analysis was involved in the preparation of these proposed rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Pursuant to s. IV, 3. a., of EO # 50, the changes proposed herein were posted on both the state's and the department's administrative rules websites for 14 days to solicit comments regarding their potential economic impact on businesses, business sectors, professional associations, local government units, or potentially interested parties. In addition, e-mail solicitations were sent to several potentially interested parties. No responses to any of the solicitations were received.

The Landscape Architect Section of the Joint Board concludes that the proposed rules will have no economic impact on small businesses. This proposal tracks statutory changes made in 2009 Wisconsin Acts 123 and 350, which became effective on February 26, 2010 and May 28, 2010, respectively, both over two years ago. Both Acts have been in place long enough to produce the resulting economic or fiscal impact experienced by private businesses or public entities, if any, and for such impact to have been fully absorbed by those entities as a part of routine operations. The transfer of authority for licensure examination content from the Joint Board to the Landscape Architect Section effected by 2011 Wis. Act 146 will have no economic impact on any individual or entity. The final two amendments of this proposal are matters of clarifying an existing rule and removing obsolete date references, neither of which carry an economic impact.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

Because the statutory changes that prompted this proposal took effect over two years ago, these proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats., beyond that which such businesses have already experienced and absorbed. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Initial Regulatory Flexibility Analysis or Summary:

As noted above, the proposed rules will have no effect on small businesses.

Agency contact person:

Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 117, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 261-2385; email at Kristine1.Anderson@Wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 117, P.O. Box 8935, Madison, WI 53708-8935, or by email to Kristine1.Anderson@Wisconsin.gov. Comments must be received on or before October 18, 2012, at 9:30 a.m., to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. A-E 8.07 is amended to read:

A-E 8.07 Unauthorized practice. An architect, landscape architect, professional engineer, designer, or land surveyor:

(1) Shall assist in enforcing laws which prohibit the unlicensed practice of architecture, landscape architecture, professional engineering, designing, and land surveying by reporting violations to the board.

(2) May not delegate professional responsibility to unlicensed persons and may not otherwise aid or abet the unlicensed practice of architecture, landscape architecture, professional engineering, designing, or land surveying.

SECTION 2. A-E 9.03 (1) is renumbered to A-E 9.03 (1) (a).

SECTION 3. A-E 9.03 (1) (b) is created to read:

A-E 9.03 (1) (b) To qualify as satisfactory experience in landscape architecture for the purposes of s. 443.035 (1) (a), Stats., an applicant's experience must be obtained subsequent to completion of the education requirements.

SECTION 4. A-E 9.05 (1) (a) is amended to read:

A-E 9.05 Examinations. (1) SCOPE OF WRITTEN EXAMINATIONS. (a) ~~After December 31, 1995, a~~An applicant for initial registration as a landscape architect shall pass an examination determined by the ~~examining board~~landscape architecture section to assess knowledges required for the professional practice of landscape architecture.

SECTION 5. A-E 9.05 (1) (b) is repealed

SECTION 6. A-E 9.05 (6) is repealed.

SECTION 7. A-E 9.06 (3) is amended to read:

A-E 9.06 (3) References from at least 5 individuals, 3 of whom have personal knowledge of the applicant's experience in landscape architecture and are engaged in the practice of landscape architecture. If 3 references from individuals who are engaged in the practice of landscape architecture are not available, the section may accept references from individuals actively engaged in the practice of an allied profession. ~~After December 31, 1995, o~~One of the 3 references having personal knowledge of the applicant's experience in landscape architecture shall be licensed or registered as a landscape architect by the licensing authority of some licensing jurisdiction in the United States or Canada.

SECTION 8. The rules adopted in this order shall take on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

COPIES OF RULE

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Rm. 117, P.O. Box 8935, Madison, Wisconsin 53708, or by email at KristineI.Anderson@Wisconsin.gov.

A-E 8, 9 (LSA Licensure, Practice) Notice of Public Hearing 9-17-12