CIDQ
Council for Interior Design Qualification

Testimony and Supporting Documents from the Council for Interior Design Qualification

2022 Legislative Study Committee on Occupational Licenses
Wisconsin State Legislature

September 27, 2022

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202-721-0220

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Margit Kelly, Legislative Council Staff
2022 Legislative Council Study Committee on Occupational Licenses
RE: CIDQ Testimony- September 2022 Study Committee Hearing

Chairman Stafsholt, Vice Chair Sortwell, Members of the Committee,

Thank you for the opportunity to testify on this important issue. My name is Matthew Barusch, Government Affairs Manager for the Council for Interior Design Qualification. I'm here to speak to you today to ask the Committee to reconsider recommendations from the 2018 report concerning interior design registration. Our primary concern is the impact that adopting the Report's recommendation will have on public health, safety, and welfare, which would be consequential and potentially dangerous.

Since 1974, our organization has developed and administered the NCIDQ exam, the preeminent national interior design certification exam, which is currently utilized by the state of Wisconsin as the prerequisite examination for interior design registration. The NCIDQ exam is a three-section, eleven-hour competency assessment of interior designers' knowledge in skill and knowledge sets pertaining to the protection of Public Health, Safety, and Welfare. Minimal competency assessments like the NCIDQ exam are essential to mitigate the risk that unqualified practice poses to public safety. The exam covers a litany of areas that significantly affects public safety, such as slip and fall, fire safety and separation, building codes, and life safety.

The scope of interior design practice materially affects the protection of the public and eliminating registration of certified interior designers would present a safety risk to the public in code-based environments. Although interior designers can perform residential work, many focus on public spaces such as hospitals, schools, nursing homes, government facilities, and office buildings. Whether NCIDQ-certified interior designers are working on a private residential project or a public-sector commercial site, their services affect the health, safety, and welfare of third parties such as guests, patients, students, visitors, employees, who eventually use those spaces. Wisconsin Registered Interior Designers work to mitigate potentially significant risk in the built environment, a role that is even more important considering the COVID-19 pandemic, as, for example, health care facilities have been forced to redesign and space plan to accommodate COVID surges and as members of the public return to stores, offices, and schools. The National Fire Protection Association (NFPA) recently emphasized services covered by the NCIDQ exam and offered by certified interior designers—such as egress management, occupant flow, partition placement, and seating arrangements—as areas of particular importance for building owners and facility managers reopening under COVID-19 safety protocols in its Coronavirus Reopening Buildings Checklist.

The impact of certified interior designers has been recognized by other design professions likewise dedicated to protecting the public in the built environment. Most recently, as part of a collaborative exercise between CIDQ and the National Council of Architecture Registration Boards, consisting of a comparative analysis of practice analyses and exam objectives between the professions of interior design and architecture, subject matter experts from both professions found that "While

similar in practice and required knowledge, architecture and interior design are *unique and distinct disciplines that both have an important role in protecting the health, safety, and welfare of the public."*

Other states that have considered similar recommendations have instead opted for continuing those policies, recognizing the danger that rolling back standards poses to public safety. In 2020, the Virginia Board of Professional and Occupational Regulation undertook a similar review of several recommendations for elimination of occupational regulation programs, their interior design registration program among them. After a review of the impact that NCIDQ-certified interior designers have on protecting the health, safety, and welfare of the public, the Final Report to the General Assembly recommended continuing their own interior design registration program and found that "The unregulated practice of interior design presents at least a moderate risk of public harm. The involvement of other regulated design professionals or building codes and inspections may not be sufficient to mitigate potential hazards to public health, safety, and welfare."

I would like to address some of the research informing the recommendation of the 2018 Wisconsin Occupational Licensing Study Legislative report, which is unfortunately misleading. The 2018 DSPS report states that interior design is only regulated in four other states (page 23). While interior design is indeed only *licensed* in four other U.S. jurisdictions (LA, NV, Puerto Rico, and the District of Columbia), interior design is regulated in 28 U.S. jurisdictions through title acts, including the state of Wisconsin. As cited in the 2018 report, title acts providing *voluntary registration* of NCIDQ-certified interior designers represent the least restrictive framework of interior design oversight, providing independent practice rights for qualified practitioners and ensuring the protection of the health, safety, and welfare of the public while not creating barriers to entry or limiting opportunities for other practitioners. In fact, since the publishing of the 2018 report, the Wisconsin State Legislature has seen fit to modernize and expand the state's current interior design law, having passed SB 344 into law during the 2022 legislative session. This new law was passed in recognition of certified interior designers' impact on public protection.

In closing, I'd like to stress to the committee that CIDQ represents neither interior designers nor the profession of interior design, and I am not here today speaking on behalf of either. Our members are the jurisdictional boards that oversee the regulated practice of interior design in the United States and Canada. Our mission is to assist those boards, like the one here in Wisconsin, to protect the health, safety, and welfare of the public. We do so by providing a means for assessing the required knowledge and minimal competencies of interior designers working in code-based environments. The state of Wisconsin has utilized that means to ensure Wisconsin Registered Interior Designers are qualified by means of education, experience, and examination as competent to protect public safety for almost thirty years. There is no benefit to discontinuing that protection. For the committee's reference, CIDQ has submitted supporting documentation with this testimony further detailing the exam's contents and development process, as well as additional materials detailing the emphasis on health, safety, and welfare in a Wisconsin Registered Interior Designer's skills and competencies. We respectfully ask the Study Committee to reconsider the 2018 report recommendation to eliminate interior design registration, and we are happy to be a resource as the committee considers its recommendations. Thank you, and I'd be happy to answer any questions.

Council for Interior Design Qualification

Appendices/Reference Materials

1. **CIDQ Definition of Interior Design**
   Developed in 2019 by CIDQ Subject Matter Experts, this definition of interior design provides a comprehensive overview of NCIDQ-certified interior designers' scope of services and impact on public health, safety, and welfare.
2. **NCIDQ Exam Development Process Infographic**
   This infographic details the process for developing the NCIDQ exam, a commonly used process that complies with the guidelines and standards published in The Standards for Educational and Psychological Testing to establish validity, reliability, and fairness.
3. **NCIDQ Exam Blueprints**
   These blueprints are created through CIDQ's practice analysis and provides content outlines for each of the three sections of the NCIDQ examination.
4. **NFPA Coronavirus Reopening Buildings Checklist**
   During the COVID-19 Pandemic, the National Fire Protection Association released General Safety Guidelines for Reopening public buildings and highlighted the importance of several factors of consideration that are routinely addressed by NCIDQ-certified interior designers.
5. **Virginia BPOR Report**
   In December 2020, the Virginia Joint Legislative Audit and Review Commission (JLARC) recommended that the Board for Professional and Occupational Regulation (BPOR) review the need for continued regulation of certain professions and occupations. This Final Report to the General Assembly summarizes the Board's findings, among them a recommendation to maintain the state's interior design registration program.
6. **Joint NCARB/CIDQ Comparison Report Executive Summary**
   In December 2021, the National Council of Architectural Registration Boards (NCARB) and the Council for Interior Design Qualification (CIDQ) issued a joint report that assesses areas of correlation and distinction between the knowledge, skills, and tasks required for competency in the fields of architecture and interior design. This document provides an executive summary of the report's findings, which affirmed interior design's unique role in protecting health, safety, and welfare. The complete report can be found here.

Definition of Interior Design

Abbreviated Definition of Interior Design

Interior design encompasses the analysis, planning, design, documentation, and management of interior non-structural/non-seismic construction and alteration projects in compliance with applicable building design and construction, fire, life-safety, and energy codes, standards, regulations, and guidelines for the purpose of obtaining a building permit, as allowed by law. Qualified by means of education, experience, and examination, interior designers have a moral and ethical responsibility to protect consumers and occupants through the design of code-compliant, accessible, and inclusive interior environments that address well-being, while considering the complex physical, mental, and emotional needs of people.

Full Definition of Interior Design

Interior design is a distinct profession with specialized knowledge applied to the planning and design of interior environments that promote health, safety, and welfare while supporting and enhancing the human experience. Founded upon design and human behavior theories and research, interior designers apply evidence-based methodologies to identify, analyze, and synthesize information in generating holistic, technical, creative, and contextually-appropriate design solutions.

Interior design encompasses human-centered strategies that may address cultural, demographic, and political influences on society. Interior designers provide resilient, sustainable, adaptive design and construction solutions focusing on the evolution of technology and innovation within the interior environment. Qualified by means of education, experience, and examination, interior designers have a moral and ethical responsibility to protect consumers and occupants through the design of code-compliant, accessible, and inclusive interior environments that address well-being, while considering the complex physical, mental, and emotional needs of people.

Interior designers contribute to the interior environment with knowledge and skills about space planning; interior building materials and finishes; casework, furniture, furnishings, and equipment; lighting; acoustics; wayfinding; ergonomics and anthropometrics; and human environmental behavior. Interior designers analyze, plan, design, document, and manage interior non-structural/non-seismic construction and alteration projects in compliance with applicable building design and construction, fire, life-safety, and energy codes, standards, regulations, and guidelines for the purpose of obtaining a building permit, as allowed by law.

Interior design includes a scope of services which may include any or all of the following tasks:

Definition of Interior Design

- **Project Management:** Management of project budget, contracts, schedule, consultants, staffing, resources, and general business practices. Establish contractually independent relationships to coordinate with, and/or hire allied design professionals and consultants.
- **Project Goals**. Understand, document, and confirm the client's and stakeholders' goals and objectives, including design outcomes, space needs, project budget, and needs for specific or measurable outcomes.
- **Data Collection:** Collect data from client and stakeholders by engaging in programming, surveys, focus groups, charrette exercises, and benchmarking to maximize design outcomes and occupant satisfaction.
- **Existing Conditions:** Evaluate, assess, and document existing conditions of interior environments.
- **Conceptualization**: Application of creative and innovative thinking that interprets collected project data and translates a unique image or abstract idea as a design concept, the foundation of a design solution. The concept is then described using visualization and communication strategies.
- **Selections and Materiality**: Selection of interior building products, materials, and finishes; furniture, furnishings, equipment, and casework; signage; window treatments, and other non-structural/non-seismic interior elements, components, and assemblies. Selections shall be made based on client and occupant needs, project budget, maintenance and cleaning requirements, lifecycle performance, sustainable attributes, environmental impact, installation methods, and code-compliance.
- **Documentation**: Develop contract documents for the purposes of communicating design intent and obtaining a building permit, as allowed by law. Documentation by phases may include schematic, design development, and construction drawings and specifications. Drawings may consist of floor plans, partition plans, reflected ceiling plans, and finish plans; furniture, furnishings, and equipment plans; wayfinding and signage plans; code plans; coordination plans; and elevations, sections, schedules, and details illustrating the design of non-load-bearing / non-seismic interior construction and/or alterations.
- **Coordination**: Overseeing non-structural/non-seismic interior design scope in concert with the scope of allied design professionals and consultants, including, but not limited to, the work of architects, mechanical, electrical, plumbing, and fire-protection engineers and designers, and acoustical, audio-visual, low-voltage, food service, sustainability, security, technology, and other specialty consultants. Coordination can include, but is not limited to:
    - Placement, style and finish of mechanical, electrical, plumbing, and fire-protection devices, fixtures, and appurtenances (i.e., accessories) with the design of the interior environment.
    - Ceiling materials and heights; interior partition locations.
    - Acoustical appropriateness of spatial arrangements, construction, and finish materials.
    - Working closely with contractors to respect budgetary constraints and contribute to value engineering efforts.
- **Contract Administration:** Administration of the contract as the owner's agent, including the distribution and analysis of construction bids, construction administration, review of contractor

payment applications, review of shop drawings and submittals, field observation, punch list reports, and project closeout.

- **Pre-Design and/or Post-Design Services:** Tasks intended to measure success of the design solution by implementing various means of data collection, which may include occupant surveys, focus groups, walkthroughs, or stakeholder meetings. Collection and reporting findings can range from casually to scientifically gathered, depending on the project's scope and goals.

Glossary of Terms

Allied design professionals or consultants: persons within related design disciplines (e.g., architects, engineers, landscape architects, and graphic designers) as well as experts from supporting disciplines (e.g., acoustics, communications, technology, security, ergonomics, branding, and food service) who may be part of a multi-disciplinary design team or hired for specific tasks.

Benchmarking: examination of possible design strategies or proposed design solutions relative to best practices and industry standards.

Code-compliant: the planning and design of an interior environment that abides by all applicable codes as they have been adopted by the local jurisdiction. Compliance often also involves meeting requirements from other state/provincial or national/federal entities as interpreted by the local code official or plan review office. This term is broadly applied as referring to meeting standards, regulations, and guidelines, in addition to codes.

Contextually-appropriate design solutions: an approach to design decision-making that involves consideration of environmental, social, cultural, economic, ecological, and political conditions that may influence and be influence by the design solution.

Contract documents: in addition to documentation of the design scope (refer to Documentation tasks, above), contract documents define administration of bids or contracts as the agent of a client. They identify project scope, timeline, schedule, process, and key parties (i.e., owner, agent, design team, etc.).

Design and human behavior theories and research: theories and/or models that have been established through research and are used as the framework or grounding for design concepts and design decision-making. Design theories (e.g., Color Theory and Gestalt Theory), the elements and principles of design, and human behavior theories (e.g., Meaning of Place Theory, Environmental Preference Theory, and Human Ecosystem Model) are examples. Research includes both qualitative and quantitative evidence

and data obtained and analyzed from observations, surveys, focus groups, case or precedent studies, and peer-reviewed literature either developed by the interior designer or from a secondary source.

Human experience: influence of the moment-to-moment physical and sensory elements found within the intimate details of interior space that impact an occupant's emotions, health, and overall feeling.

Human-centered strategies: design solutions that result from understanding occupants' needs and behaviors that influence their performance, satisfaction, and well-being, among other personal and social outcomes. Evidence from design and human behavior theories and research, and first-hand information gathered from the occupants and other stakeholders are considered and applied.

Non-structural/non-seismic construction and alteration: interior elements or components that are not load-bearing or do not assist in the seismic design and do not require design computations for a building's structure. It excludes the structural frame supporting a building. Common non-structural elements or components include, but are not limited to, ceiling and partition systems. These elements employ normal and typical bracing conventions and are not part of the structural integrity of the building but may support loads attached to it such as cabinetry, shelving, or grab bars This relates to a newly constructed interior environment or to the planning and design of an existing interior environment that is to be renovated or remodeled.

Pre-design and/or post-occupancy evaluation/review: identify what is needed prior to design and/or evaluation of the outcomes of the design solution to determine if it will meet/met the client's goals and occupants' needs, etc. It could involve interviews, focus groups, or surveys among other means.

Resilient: integrate design strategies to an environment that are able to withstand and recover quickly when faced with a natural, manufactured, cyber, or physical disaster.

Sustainable: design that that seeks to minimize the negative environmental impact of the interior environment through efficiency and moderation in the use of materials, energy, and reuse of space.

Visualization and communication strategies: the visual communication of concepts, ideas, and solution utilizing 2-dimensional or 3-dimensional drawings, graphic imagery, verbal, and written communication. Communication can be executed digitally or by hand and presented virtually or as hard copies.

Wayfinding: the design strategy used to influence building occupants to navigate in unfamiliar surroundings and may include signage (i.e., wall or ceiling mounted plaques or banners that include directional instructions and names/numbers that identify a space or direction), landmarks (e.g., a fountain, staircase), or use of interior elements (i.e., space, light, and color) to guide them.

INSIDE LOOK: THE NCIDQ EXAM DEVELOPMENT PROCESS

To ensure the NCIDQ Examination is valid, fair, and reliable, the Council for Interior Design Qualification (CIDQ) complies with guidelines and standards published in The Standards for Educational and Psychological Testing. CIDQ works with a professional testing company that specializes in developing certification and licensure exams throughout the entire test-development and administration process.

1 PRACTICE ANALYSIS

During the practice analysis, a panel of interior design experts defines the overall practice areas and distinct tasks, knowledge, and skills required to validate competency.

Nearly 800 practicing interior designers review and rate the areas and tasks according to level of importance.

2 DEVELOPING A TEST BLUEPRINT

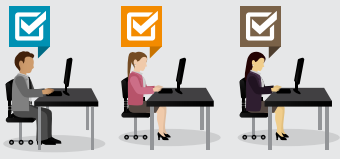
Based on the practice analysis, we develop an exam blueprint, which determines the relative weight of each practice area or task and the number of corresponding questions.

3 QUESTION DEVELOPMENT AND VALIDATION

Exam questions are written and reviewed by NCIDQ certificate-holding subject matter experts, who are trained in exam development best practices.

4 PRETESTING EXAM QUESTIONS

CIDQ pretests all questions before including them as scored items on the exam. Pretest results are analyzed statistically to ensure the quality and reliability of the overall exam.



CIDQ uses a leveling procedure to ensure that one test is not harder or easier than another.

5 EXAMINATION ASSEMBLY

For each exam administration, an appropriate number of questions from each content area is selected from pretested questions as specified in the test blueprint.

A committee of NCIDQ-certified exam reviewers works with testing experts to ensure maximum quality and an appropriate mixture of content.

6 REVIEW AND REVISION

The draft exams are again reviewed by the committee for technical accuracy and by testing experts to ensure process integrity.

7 PASSING SCORE

CIDQ works with our testing consultant to determine the defensible, criterion-referenced passing score.

The passing point allows CIDQ to validate an interior designer's ability to practice independently in a manner that protects public health, safety, and welfare.

8 TEST ADMINISTRATION

Specific, consistent processes are in place for admitting candidates into the exam room, using highly trained personnel to verify identity, provide security, allot test times, etc.

Testing facilities must meet CIDQ guidelines for security, proper room size, ventilation, restroom facilities, accessibility, and noise control.

9 PSYCHOMETRIC ANALYSIS

After each exam administration, CIDQ conducts systematic analysis studies to ensure the proper function of each question and of the test as a whole.

Psychometric analysis evaluates the quality of the exam using extensive reliability analysis and other studies.

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LEARN MORE

CIDQ
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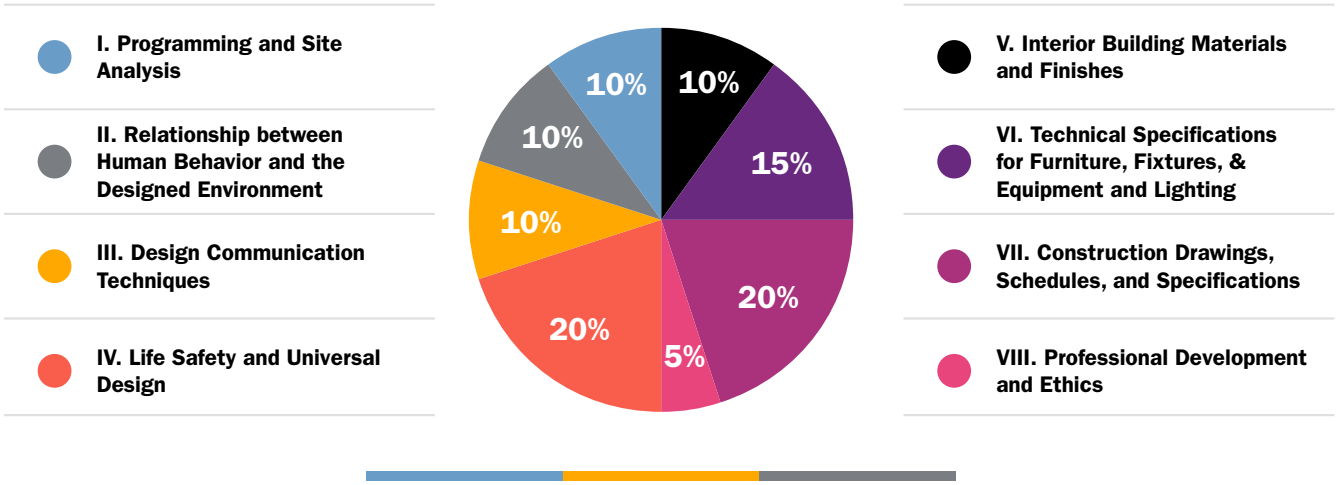
IDFX
Interior Design Fundamentals Exam

- 3 hours
- 125 questions
- Multiple Choice

The **Interior Design Fundamentals Exam (IDFX)** focuses on the concepts and principles of interior design with an emphasis on Health, Safety and Welfare. Candidates eligible for the IDFX includes students (in their final year of a Bachelor's or Master's in Interior Design degree program), recent graduates and emerging professionals with an applicable interior design degree. The IDFX exam covers competencies in: programming and site analysis; relationship between human behavior and the designed environment; design communication techniques; life safety and universal design; interior building materials and finishes; technical specifications for furniture, fixtures, & equipment and lighting; construction drawings, schedules and specifications; and professional development and ethics.



I. Programming and Site Analysis 10%

Demonstrate appropriate use of:

- **analysis tools** (e.g., spreadsheets, site photographs, matrices, bubble diagrams, graphs, behavioral based analytics)

Demonstrate understanding of:

- **research methods** (e.g., observations, interviewing, surveying, case studies, benchmarking, precedent studies)
- **the site context** (e.g., location, views, solar orientation, zoning, historical information, constraints, change of use, transportation)

II. Relationship between Human Behavior and the Designed Environment 10%

Demonstrate understanding of:

- **human factors** (e.g., ergonomics, anthropometrics, proxemics, psychological, physiological, social)
- **universal design** (e.g., accessibility, ability level, inclusivity, special needs, aging population, bariatric, pediatric)
- **contextual influences** (e.g., environmental and ecological, social, cultural, aesthetic, hierarchy of needs)

Demonstrate knowledge of:

- **sensory considerations** (e.g., acoustics, lighting, visual stimuli, color response, scent, tactile, thermal comfort)

III. Design Communication Techniques 10%

Ability to apply:

- **data and research** (e.g., charts, infographics, analytics)
- **conceptual diagrams** (e.g., parti diagrams, bubble diagrams, adjacency matrices)
- **planning diagrams** (e.g., stacking/zoning diagrams, block plans/square footage allocations)

IV. Life Safety and Universal Design 20%

Demonstrate understanding of:

- **life safety** (e.g., egress, fire separation, fire-rated partitions and doors, and A/V alarms location coordination)
- **universal design** (e.g., inclusive design, accessible design)

V. Interior Building Materials and Finishes 10%

Demonstrate understanding of:

- **textiles** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)
- **floor coverings** (e.g., types, transitions, testing standards and codes, applications, installation methods, estimating, slip resistance, technical specifications)
- **wall treatments** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)
- **window treatments** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)
- **ceiling treatments** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)
- **acoustical products** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)
- **wayfinding and signage** (e.g., types, testing standards and codes, applications, installation methods, estimating, technical specifications)

VI. Technical Specifications for Furniture, Fixtures, & Equipment and Lighting 15%

Demonstrate understanding of:

- **life safety elements** (e.g., flammability, toxicity, slip resistance, accessibility and egress clearances, fixed and loose furniture, indoor air quality, code compliance)
- **sustainability and environmental impact** (e.g., recyclability, cradle to cradle, embodied energy, carbon footprint, material sourcing, ratings and certifications)
- **materials and technical specifications** (e.g., color fastness, abrasion resistance, cleanability, reference standards, ANSI/BIFMA)
- **light fixture selection and specification** (e.g., general, accent and task lighting; color temperature, color rendering, lamp types, energy load)

VII. Construction Drawings, Schedules, and Specifications 20%

Demonstrate understanding of:

- **code required information** (e.g., egress, accessibility, specialty codes, fire/life safety, occupancy, plumbing calculations)
- **appropriate measuring conventions** (e.g., scale, unit of measure, dimensioning)
- **construction drawing standards** (e.g., annotations, hatch patterns, line types, symbols, north arrow, section cuts, cross referencing)

Understand and develop:

- **general information sheets** (e.g., general conditions and notes, drawing index, legend, symbols, location, consultant, contact information)
- **demolition plans**
- **floor plans** (e.g., partition plan, construction plan, dimension plan)
- **reflected ceiling and/or lighting plans** (e.g., supplies, returns, ceiling types, heights, monitoring and detection devices, switching, controls)
- **furniture plans**
- **finish plans**
- **elevations, sections, and details** (e.g., partition types, enlarged plans, custom details and assemblies)
- **power, data, and communication plans**
- **schedules** (e.g., finish, equipment, plumbing, lighting, door, window, hardware, accessories)
- **millwork** (e.g., construction techniques, coordination with Furniture, Fixtures, & Equipment, and utilities, substrates, shop drawings, material selection, accessibility)

VIII. Professional Development and Ethics 5%

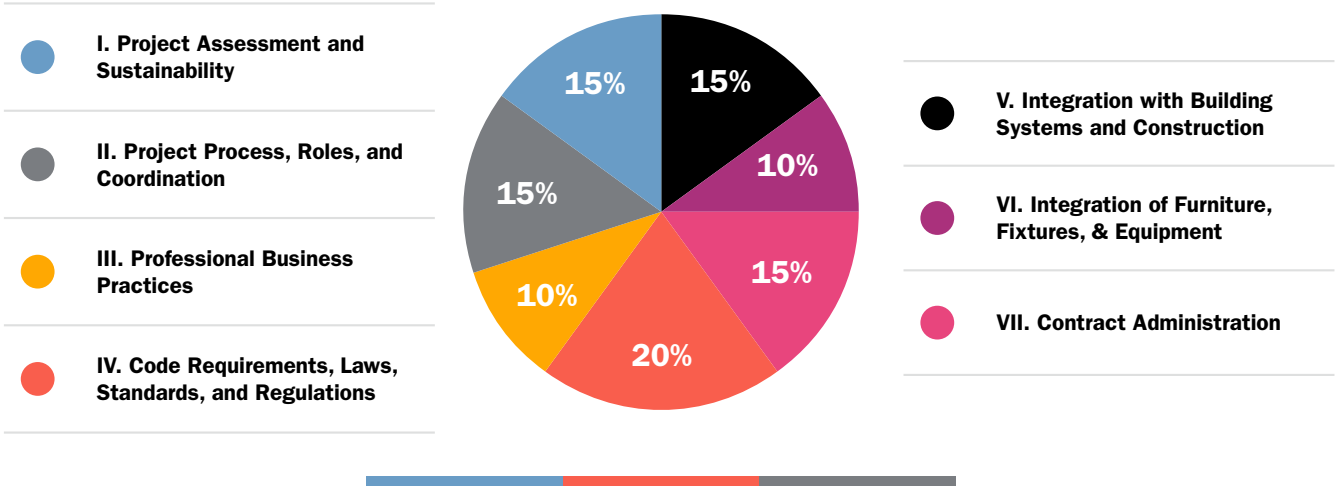
Demonstrate understanding of:

- **professional ethics** (e.g., code of ethics, consumer protection, health, safety, welfare, social responsibility)
- **professional development** (e.g., professional organizations, continuing education)

IDPX
Interior Design Professional Exam

- 4 hours
- 175 questions
- Multiple Choice

The **Interior Design Professional Exam (IDPX)** focuses on analyzing and applying the project management coordination of the interior design process with an emphasis on Health, Safety and Welfare. The IDPX exam covers competencies in: project assessment and sustainability; project, process, roles and coordination; professional business practices; code requirements, laws, standards, and regulations; integration with building systems and construction; integration of furniture, fixtures & equipment; and contract administration.



I. Project Assessment and Sustainability 15%

Ability to understand and analyze:

- **square footage standards** (e.g., building codes, BOMA calculations and terminology)

Demonstrate understanding of:

- **environmental and wellness attributes** (e.g., energy and water, conservation, renewable resources, indoor air quality, resiliency, active design)
- **existing conditions analysis** (e.g., hazardous materials, seismic, accessibility, construction type, occupancy type)
- **project drivers** (e.g., stakeholder requirements, space usage, preferred culture and branding, goals and objectives, budget)

II. Project Process, Roles, and Coordination 15%

Understand and identify:

- **scope of project team members** (e.g., architects, engineers, specialty consultants, contractors, construction managers)
- **role of stakeholders** (e.g., management, identification, level of interest, level of influence, managing expectations)

Demonstrate understanding of:

- **project budgeting/tracking** (e.g., value engineering, alternates, timing and responsibility)
- **critical path** (e.g., design milestones, sequencing, design phases, deliverables)
- **design phase criteria** (e.g., deliverables, approval, sign-off, quality control, meeting project goals and objectives)
- **allied professionals' drawings** (e.g., mechanical, electrical, and structural engineering, architecture, security, specialty consultants)
- **specification types and format** (e.g., prescriptive, performance, proprietary, divisions)
- **phased construction plan**
- **post occupancy evaluation** (e.g., metrics, timing, scope, analyzing data, evaluating criteria, commissioning, employee surveys)

CIDQ NCIDQ Examination

III. Professional Business Practices
10%

Demonstrate understanding of:

- **scope of practice** (e.g., legal liability, laws and regulations, certification vs licensure, practice and title act)
- **business structures** (e.g., LLC, joint ventures, sole proprietor, partnership, corporation)
- **business management** (e.g., applicable taxes, accounting, liability and insurance)

Ability to understand and develop:

- **proposals** (e.g., time and fee estimation, Request for Proposals, process, project scope, presentation, exclusions, add services)
- **contracts** (e.g., legal considerations, liabilities, terms and conditions)
- **project budgeting principles and practices**

IV. Code Requirements, Laws, Standards, and Regulations
20%

Demonstrate understanding of:

- **environmental regulations** (e.g., indoor air quality, energy conservation, material conservation, water conservation)
- **reference standards and guidelines** (e.g., ADA/Accessibility, BIFMA, ASHRAE, OSHA, NFPA, IBC)
- **zoning and building use**
- **permit requirements** (e.g., processes, timing, awareness of jurisdictional differences)

V. Integration with Building Systems and Construction
15%

Demonstrate understanding and application of:

- **structural systems** (e.g., load bearing, non-load bearing, steel, concrete, post-tension)
- **plumbing systems** (e.g., low flow, waterless, filtration, water metering, gray water)
- **fire protection systems** (e.g., sprinklers, strobes, alarms, extinguishers, smoke and heat detectors)
- **low voltage systems** (e.g., data and communication, security, A/V)
- **mechanical systems** (e.g., types of systems, coordination with ceiling plans, indoor air quality)
- **monitoring systems** (e.g., building automation systems)
- **installation methods** (e.g., sequencing of work)
- **building construction types** (e.g., wood, steel, concrete)
- **building components** (e.g., doors, windows, wall assemblies, hardware, glazing assemblies)
- **vertical and horizontal systems of transport** (e.g., stairs, elevators)
- **lighting systems** (e.g., fixtures, zoning, sensors, daylighting, circadian rhythms, calculations, distribution, energy efficiency)
- **electrical systems** (e.g., outlet placement, switching, GFI, occupancy sensors)
- **acoustical systems** (e.g., sound masking, NRC, STC, CAC, AC, sound batting, wall types and ceiling elements)

VI. Integration of Furniture, Fixtures, & Equipment
10%

Identify and apply appropriate:

- **product components** (e.g., system furniture vs ancillary furniture, power integration of furniture, acoustic panels vs non-acoustic panels, modular wall systems)

Demonstrate understanding of:

- **equipment integration** (e.g., appliances or specialty equipment within the design, accessibility and code compliance)
- **and parameters of maintenance** (e.g., warranties, manuals, cleaning protocols, documents)
- **processes for procurement, delivery, and installation** (e.g., sequencing, purchase orders, prepayment requirements, Customer's Own Material, liabilities, shop drawings, lead time)

Ability to conduct and communicate:

- **budgeting and cost estimating** (e.g., quantity takeoffs, product cost, install cost, overage, attic stock, life cycle costing, Return on Investment)

VII. Contract Administration
15%

Demonstrate understanding of:

- **and application of documentation and procedures** (e.g., transmittals, contemplative change orders, change directive, change order, addenda, bulletin, purchase orders, Request for Information (RFIs))
- **project accounting** (e.g., payment schedules, invoices, contractor pay applications and approvals)

Ability to lead:

- **project meetings** (e.g., management, protocol, minutes)

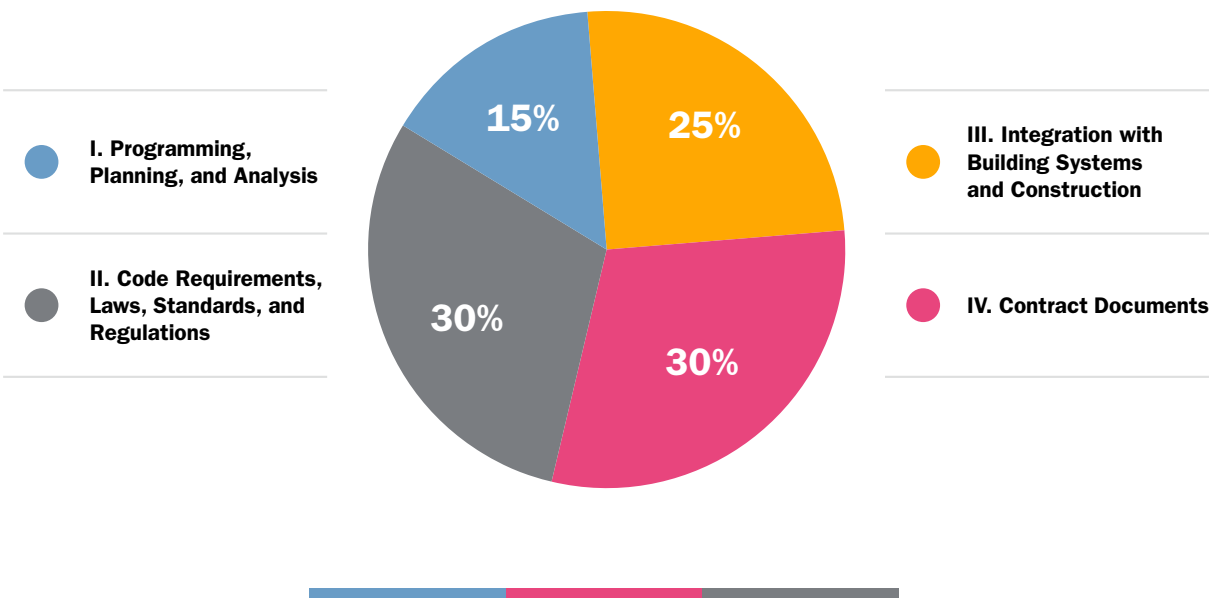
Demonstrate understanding and utilization of:

- **site visits and field reports**
- **shop drawings and submittals**
- **construction mock-ups**
- **punch lists/deficiency list**

PRAC
Practicum Exam

- 4 hours
- 114 questions
- Fill in the Blank, Hot Spot, Drag and Place

The **Practicum Exam (PRAC)** utilizes three case studies (large commercial, small commercial, and multi-family residential) to assess the ability to apply, synthesize, and integrate information related to the design process using resources provided with an emphasis on Health, Safety and Welfare. The PRAC covers competencies in: programming, planning and analysis; code requirements, laws, standards, and regulations; integration with building systems and construction; and contract documents.



I. Programming, Planning, and Analysis 15%

Demonstrate understanding and appropriate use of:

- **analysis tools** (e.g., spreadsheets, site photographs, matrices, bubble diagrams, graphs, behavioral based analytics)
- **planning diagrams** (e.g., stacking/zoning diagrams, block plans/square footage allocations)

Demonstrate understanding of:

- **square footage standards** (e.g., building codes, BOMA calculations and terminology)
- **existing conditions analysis** (e.g., hazardous materials, seismic, accessibility, construction type, occupancy type)
- **universal design** (e.g., accessibility, ability level, inclusivity, special needs, aging population, bariatric, pediatric)
- **life safety codes and standards** (e.g., flammability, toxicity, slip resistance, accessibility and egress clearances, fixed and loose furniture, Indoor air quality, code compliance)

Assess the:

- **human factors** related to the interior space (e.g., ergonomics, anthropometrics, proxemics, psychological, physiological, social)

II. Code Requirements, Laws, Standards, and Regulations
30%

Ability to integrate:

- **life safety** elements (e.g., egress, fire separation)

Demonstrate understanding of:

- **reference standards and guidelines** (e.g., BIFMA, ASHRAE, OSHA, NFPA, IBC)
- **zoning and building use requirements**
- **permit requirements** (e.g., processes, timing, awareness of regional differences)
- **universal design** (e.g., inclusive design, accessible design)

III. Integration with Building Systems and Construction
25%

Demonstrate knowledge and application of relevant:

- **plumbing systems** (e.g., low flow, waterless, filtration, water metering, gray water)
- **fire protection systems** (e.g., sprinklers, strobes, alarms, extinguishers, smoke and heat detectors)
- **mechanical systems** (e.g., types of systems, coordination with ceiling plans, indoor air quality)
- **building construction types** (e.g., wood, steel, concrete)
- **building components** (e.g., doors, windows, wall assemblies, hardware, glazing assemblies)
- **vertical and horizontal systems of transport** (e.g., stairs, elevators)
- **electrical systems** (e.g., outlet placement, switching, GFI, occupancy sensors)
- **acoustical systems** (e.g., sound masking, NRC, STC, CAC, AC, sound batting, wall types and ceiling elements)

Determine appropriate:

- **lighting systems** (e.g., fixtures, zoning, sensors, daylighting, circadian rhythms, calculations, distribution, energy efficiency)

IV. Contract Documents
30%

Demonstrate understanding of:

- **light fixture selection and specification** (e.g., general, accent and task lighting; color temperature, color rendering, lamp types)
- **equipment integration** (e.g., appliances or specialty equipment within the design, accessibility and code compliance)
- **allied professionals' drawings** (e.g., mechanical, electrical, and structural engineering, architecture, security, specialty consultants)

Ability to develop, analyze, and/or review:

- **phased construction plans**
- **code required information** (e.g., egress, accessibility, specialty codes, fire/life safety, occupancy, plumbing calculations)
- **general information sheets** (e.g., general conditions and notes, drawing index, legend, symbols, location, consultant, contact information)
- **demolition plans**
- **floor plans** (e.g., partition plan, construction plan, dimension plan)
- **reflected ceiling and/or lighting plans** (e.g., supplies, returns, ceiling types, heights, monitoring and detection devices, switch patterns, controls)
- **furniture plans**
- **finish plans**
- **elevations, sections, and details** (e.g., partition types, enlarged plans, custom details and assemblies)
- **power, data, and communication plans**
- **schedules** (e.g., finish, equipment, plumbing, lighting, accessories, door, hardware, window)
- **millwork** (e.g., construction techniques, coordination with Furniture, Fixtures, & Equipment, and utilities, substrates, shop drawings, material selection, accessibility)

Ability to analyze, and/or review:

- **measuring conventions** (e.g., scale, unit of measure, dimensioning)
- **construction drawing standards** (e.g., annotations, hatch patterns, line types, symbols, north arrow, section cuts, cross referencing)

FACT SHEET

ENSURING SAFETY AS BUILDINGS RE-OPEN TO A NEW NORMAL

With the U.S. federal government and many states beginning to allow businesses to reopen, building owners and facility managers will be getting ready to allow occupants back into structures that may have been relatively vacant for an extended period. While there are many common hazards to be addressed to ensure the safety of occupants as buildings of all types reopen, there will be some unique challenges for specific buildings based on their traditional usage, particularly as building owners and facility managers work to adhere to public health guidelines or otherwise modified provisions required in response to the pandemic.

While the NFPA Fire and Life Safety Checklist for Reopening a Building reviews factors that should be confirmed to ensure proper performance of fire protection and life safety systems prior to reopening any building, following are some guidelines for specific issues to be addressed for many buildings, including offices, restaurants, and retails stores, with particular attention to adjustments that might be needed for the physical configuration as well as the operational use.

GENERAL SAFETY GUIDELINES FOR REOPENING

Egress Management

Changes to how occupants typically enter and exit buildings as well as travel within them may need to be modified to avoid two-way flow encounters. Whether this is accomplished by using barriers or any other means, provisions need to be in place that allow occupants to access all exits and exit access during an emergency.

Queuing Lines

Designated queuing lines may need to be established to manage the number of occupants who come into the premises at one time. Provisions should be in place to ensure the use of all exits for customers in emergency conditions. Additionally, queuing lines of one store or building should not impede exit discharge of adjacent stores or buildings.

Occupant Flow

If one-way aisle pedestrian paths are established, appropriate signage should be in place to establish the desired flow. When using any type of fixed or semi-fixed barrier to manage directional flow, it should not obstruct or block means of egress within the building and that it allows for free dispersion of occupants after they leave the building under emergency conditions or circumstances.

Partition Placement

If partitions are added to provide increased separation between occupants, it needs to be verified that the materials meet flame spread index and smoke-developed ratings specified by the interior finish provision of NFPA *101®, Life Safety Code®*. The impact of the partitions on the performance of smoke detection or automatic sprinkler systems must also be evaluated to ensure that their design and installation do not render the systems noncompliant and therefore ineffective.

ENSURING SAFETY AS BUILDINGS RE-OPEN TO A NEW NORMAL *CONTINUED*

Hand Sanitizer Storage and Placement

Hand sanitizing stations will likely be provided in many buildings and, in most cases, administered through alcohol-based hand rub (ABHR) dispensers. ABHRs and stored flammable liquid quantity must be verified to not exceed the limits allowed by codes and standards. In addition, the placement of ABHRs, whether free-standing or mounted, cannot restrict available egress paths. NFPA *101* should be specifically referenced to ensure proper use of ABHRs including their location, the dispenser characteristics, and distances between dispensers.

Automatic/Power-Operated Doors

Many facilities might consider the use of automatic hold-open devices on doors to limit the need for occupants to open doors with their hands. While many variations of this are permitted by NFPA *101*, close attention needs to be paid to ensure that the design, function, and operations of such doors fully comply with code requirements.

Seating Arrangements

In order to maintain compliance with public health guidelines, many seating arrangements will need to be modified in order to provide adequate spacing between parties. While rearranging the seating, it is important that the reconfiguring of seats and tables does not obstruct or block needed egress paths, exits, or manual fire alarm pull stations.

Storage Management

If changes to operations require the storage of extra boxes, bags, or other materials, then those products need to be carefully managed to ensure the following:

- They do not block or obstruct egress, manual pull stations, or fire extinguishers;
- They are not stored too high to obstruct sprinklers; and
- They are not located too close to heat sources.

Additionally, if secondary exits are used for delivery drivers to come in and out of occupancies, for example in restaurants, adequate space must be maintained for occupants to freely egress in an emergency.

Learn More

As the world grapples with the COVID-19 pandemic, NFPA continues to provide key resources and information that address emergency planning, building, and fire and life safety issues. New resources are being added as the crisis evolves and challenges emerge. Visit nfpa.org/coronavirus to access the latest resources.

Board for Professional and Occupational Regulation

December 17, 2020

FINAL REPORT TO THE GENERAL ASSEMBLY

Evaluation of the Need for Continued Regulation of Certain Professions and Occupations as Recommended by the Joint Legislative Audit and Review Commission

Department of Professional and Occupational Regulation

Contents

Summary

The Joint Legislative Audit and Review Commission (JLARC) recommended that the Board for Professional and Occupational Regulation (BPOR) review the need for continued regulation of certain professions and occupations. The purpose of this report is to:

1. Determine the appropriate level of regulation, if any, for currently licensed soil scientists, waste management facility operators, and landscape architects, and
2. Evaluate potential impacts of deregulation on currently certified common interest community manager employees, interior designers, backflow prevention device workers, and wetland delineators.

After assessing those programs against the statutory criteria enumerated in § 54.1-311 of the Code of Virginia to inform its analysis, BPOR offers the following findings and recommendations.

Key Findings + Recommendations

Assessment of the need for continued regulation

Soil Scientists

- Certification of soil scientists, rather than licensing, appears to be the least-restrictive degree of regulation necessary to protect the public.
- The General Assembly may wish to consider reverting to the system of voluntary certification (title protection) that existed prior to 2013.
- If deregulated, national certification could serve as a substitute for state regulation.

Waste Management Facility Operators

- State occupational regulation of waste management facility operators is not warranted.
- The General Assembly may wish to consider eliminating the licensing program, and rely instead on existing facility oversight by the Virginia Department of Environmental Quality.
- If deregulated, national certifications could serve as a substitute for state regulation.

Landscape Architects

- Licensure of landscape architects appears justified as the least-restrictive degree of regulation necessary to protect the public.
- If landscape architects are deregulated, there is no substitute for state regulation.
- To address JLARC's concerns about risk from unregulated occupations performing similar work under the existing regulatory framework, the General Assembly may wish to consider reserving aspects of the scope of practice only to licensed professionals.

Assessment of potential impact of de-certification

Common Interest Community Manager Employees

- State occupational regulation of CIC manager employees is not warranted.
- The General Assembly may wish to consider eliminating the certification program; national certifications could serve as a substitute for state regulation.
- If deregulated, current certificate holders would be relieved of the obligation to pay a $75 fee every two years to renew their state credential.

- Compliance costs associated with national certifications include annual fees ranging from $85-$385 and completion of up to 16 hours of continuing education as a condition of renewal.

Interior Designers

- State certification of interior designers appears justified as the least-restrictive degree of regulation necessary to protect the public.
- National certification is not an equivalent substitute for state regulation and may not offer the same public protection.
- If deregulated, current certified interior designers would be relieved of the obligation to pay a $45 fee every two years to renew their state credential.
- Deregulation may result in significant economic disruption for current certificate holders by jeopardizing their practice rights and entrepreneurship opportunities.

Backflow Prevention Device Workers

- State certification of backflow prevention device workers appears warranted as the least-restrictive degree of regulation necessary to protect the public.
- Relying on national or local certifications as alternatives to state regulation is likely to increase compliance burdens on current certificate holders, particularly for those who work in more than one locality.
- If deregulated, current certified backflow prevention device workers would be relieved of the obligation to complete eight hours of continuing education and pay a $50 fee every two years to renew their state credential.
- Deregulation conflicts with impending Virginia Department of Health regulatory action that would mandate anyone who tests and repairs backflow prevention assemblies and devices be a DPOR-certified backflow prevention device worker.

Wetland Delineators

- State certification of wetland delineators appears justified as the least-restrictive degree of regulation necessary to protect the public.
- National certification is not an equivalent substitute for state regulation and may not offer the same public protection.
- If deregulated, current certified professional wetland delineators would be relieved of the obligation to pay a $70 fee every two years to renew their state credential.
- Compliance costs associated with national certification include a $75 annual fee, as well as a $100 renewal fee and completion of continuing education every five years.

Overview

In its 2018 report, *Operations and Performance of the Department of Professional and Occupational Regulation*, JLARC found the vast majority of occupations assigned to the agency met Virginia's statutory criteria to warrant regulation. In Chapter 2 of its report, JLARC noted:

> The General Assembly decides which occupations are regulated by the Department of Professional and Occupational Regulation (DPOR). The decision to regulate an occupation should consider two priorities: the need to protect the public and the need to avoid placing unnecessary restrictions on individuals and businesses entering the workforce.

However, JLARC's analysis determined several DPOR-regulated occupations either explicitly do not satisfy the criteria for regulation, or the current level of regulation is unnecessary because the public is otherwise sufficiently protected. For example, report recommendations 1 and 4 suggested the General Assembly take legislative action to eliminate regulation of natural gas automobile mechanics and technicians, common interest community managers; opticians; and residential building energy analysts and firms.[1]

Additionally, JLARC cited the statutory authority granted to the Board for Professional and Occupational Regulation (BPOR) to evaluate whether currently unregulated occupations should be regulated, noting that in the past the General Assembly often directed BPOR to review proposed and existing regulatory programs using the guidelines enumerated in § 54.1-311.

"Greater use of this evaluation process would help ensure the General Assembly is able to make fully informed decisions about which occupations should be regulated," according to JLARC.

Purpose

JLARC recommended BPOR review the need for continued regulation of the following occupations, in accordance with the statutory evaluation process:

- Virginia licensed professional soil scientists
- Waste management facility operators
- Landscape architects
- Common interest community manager principal/supervisory employees
- Certified interior designers
- Backflow prevention device workers
- Virginia certified professional wetland delineators

The purpose of this report is to determine the appropriate level of regulation, if any, for soil scientists, waste management facility operators, and landscape architects; and to evaluate potential impacts of deregulation on currently certified common interest community manager employees, interior designers, backflow prevention device workers, and wetland delineators.

[1] Chapter 1168 of the 2020 Acts of Assembly deregulated natural gas automobile mechanics and technicians. Legislation introduced during the 2019 Session of the General Assembly to deregulate CIC managers, opticians, and residential building energy analysts and firms failed to pass (HB 2099).

Methodology

BPOR developed study guidelines to document best practices and procedures used in prior evaluations. The guidance document is publicly available on the Virginia Regulatory Town Hall to inform interested parties of BPOR's statutory authority and its approach toward conducting studies.[2] In addition to data collection and analysis, the evaluation process solicits and encourages meaningful public participation from the public as well as regulated communities.

For this study, to complement its research and document review, staff interviewed practitioners, program administrators, representatives of professional associations, and other stakeholders. After issuing an interim report in December 2019,[3] BPOR scheduled public hearings to solicit comment as follows:

March 20, 2020	Richmond
March 23, 2020	Harrisonburg
April 17, 2020	Abingdon
May 21, 2020	Chesapeake
May 27, 2020	Fairfax

Unfortunately, the COVID-19 public health emergency required cancelation of all in-person public hearings. Given the uncertainty surrounding when public hearings might be rescheduled safely, and in order to provide interested parties sufficient opportunity to provide comment, BPOR opened a public comment forum on the Virginia Regulatory Town Hall from September 1 – 30, 2020.

BPOR received 980 comments in total via the online forum, all of which are available for review at: https://townhall.virginia.gov/L/ViewNotice.cfm?GNid=1150. In addition, 15 individuals offered public comment during the board's December 17, 2020, meeting, where the board voted unanimously to adopt this final report for presentation to the General Assembly.[4]

Degrees of Regulation

Pursuant to § 54.1-311, if BPOR recommends a particular profession or occupation be regulated—or suggests a different level of regulation should be imposed on an already regulated profession or occupation—it shall consider the following degrees of regulation in order:

1. Private civil actions and criminal prosecutions

Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide stricter causes for civil action and criminal prosecution.

2. Inspection and injunction

Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may recommend more adequate inspection procedures and to specify procedures whereby the

[2] *See* https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6036

[3] *See* https://rga.lis.virginia.gov/Published/2019/RD695

[4] Other than relevant information regarding the national interior design certification program, which BPOR voted to incorporate into its final report, no new pertinent data was presented during public comment at the December 17, 2020, meeting.

appropriate regulatory entity may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration

Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may recommend a system of registration.

4. Certification

When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may recommend a system of certification.

5. Licensing

Whenever adequate regulation cannot be achieved by means other than licensing, the Board may recommend licensing procedures for any particular profession or occupation.

Criteria

In determining the proper degree of regulation, if any, BPOR shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.
2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.
3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Alternatives to Regulation

In cases where BPOR identifies a potential risk from an unregulated profession or occupation, but other criteria are insufficient to substantiate a regulatory program of registration, certification, or licensure, it may make other recommendations.

In accordance with statute and Criteria 6 and 7, BPOR must consider less restrictive means to protect the public's health, safety, and welfare, rather than interfering in the occupational property rights of individuals.

Evaluation Matrix

If an evaluation indicates that a regulatory program is warranted, BPOR assesses the criteria against the degrees of regulation, from least restrictive (registration) to most restrictive (licensure).

The following matrix outlines the characteristics of registration, certification, and licensure, and summarizes criteria applicable to each category.

	REGISTRATION	CERTIFICATION	LICENSURE
	Requires only the filing of name, location, and occasionally additional information. Minimum competency standards are not typically required for a registry.	*Voluntary; also known as "title protection." No scope of practice reserved to a particular group. However, only those individuals who meet minimum competency standards may use or call themselves by the protected title.*	*Mandatory; most restrictive level of occupational regulation. Statutory scope of practice reserved to select group based on unique, identifiable, minimum competencies for public protection.*
Risk	Low potential, but consumers need to know that redress is possible.	Moderate potential, attributable to the nature of the practice, consumer vulnerability, or practice setting and level of supervision.	High potential, attributable to the nature of the practice.
Skill + Training	Variable, but can be differentiated from ordinary work and labor.	Specialized; can be differentiated from ordinary work. Candidate must complete specific education or experience requirements.	Highly specialized education required.
Autonomy	Variable.	Variable; some independent decision-making; majority of practice actions directed or supervised by others.	Practices independently with a high degree of autonomy; little or no direct supervision.
Scope of Practice	N/A	Definable in enforceable legal terms; not reserved.	Definable in enforceable legal terms; reserved.
Applicable Criteria	Criteria 4, 5 and 6 must be met.	Criteria 1 through 6 must be met.	Criteria 1 through 6 must be met.

Assessment of the need for continued regulation

In its 2018 report, JLARC found several mandatory licensure programs previously established by the General Assembly "do not substantially meet the criteria Virginia has set for regulation," including those restricting access to practice as a soil scientist, waste management facility operator, and landscape architect (see Table 2-2 from JLARC report below).

TABLE 2-2
Some licensed occupations do not substantially meet criteria for regulation

	Unregulated practice can harm public	Work is distinguishable from others	Public benefits from state assurance	Public is not protected by other means
Community managers 185 regulants	○	◑	◑	◑
Opticians 1,895 regulants	○	◑	◑	◑
Residential energy analysts & firms 127 regulants	○	●	◑	◑
Soil scientists 102 regulants	◑	●	◑	○
Waste mgmt. facility operators 670 regulants	◑	●	○	◑
Landscape architects 925 regulants	◑	◑	◑	◑

KEY ●=meets criteria ◑=partially meets criteria ○=does not meet criteria

Noting the statutory proscription in § 54.1-100 against occupational regulation unless necessary for public protection, JLARC's analysis concluded:

> Three occupations pose some risk of harm, but regulation is not needed because the public is protected by other means so the risk is low (soil scientist); or regulation provides little added benefit (waste management facility operators); or regulation does not fully address the risk because much of the same work can be performed by unregulated occupations (landscape architects).

Although these three occupations "pose some potential for public harm if left unregulated," because the risks appear minimal, **JLARC recommended BPOR determine what level of regulation is warranted, if any.**

Soil Scientists

According to JLARC's analysis, regulation of soil scientists is unnecessary due to a low risk of public harm; although incompetent practice could negatively impact land use or land management, the report suggests potential harm is remote because many other regulated professionals are involved in such processes. Moreover, JLARC noted an existing private national certification is available to verify qualifications for soil scientists as an alternative to state regulation.

Virginia-licensed professional soil scientists are defined in § 54.1-2200 as "a person who possesses the qualifications required for licensure by the provisions of this chapter and the regulations of the Board and who has been granted a license by the Board." The practice of soil evaluation, as defined below, is restricted to licensed soil scientists[5]:

> ". . . the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings."

Initially, the legislature established the regulatory program governing soil scientists as a voluntary certification in 1989. During the 2011 Session of the General Assembly, the level of regulation increased to licensure with an effective date of July 1, 2013.

The Board for Soil Scientists, Wetland Professionals, and Geologists administers and enforces the regulatory program for soil scientists. As of December 1, 2020, Virginia regulated 89 licensed professional soil scientists,[6] composing 7.5% of that board's total regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of soil science presents a moderate risk of public harm. Hazards are mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities to protect against ineffective land use or land management problems.

Examples of potential harm from incompetent practice include detrimental repair costs to homeowners; contaminated water and dead vegetation; failure to identify suitable soils for their capacity of taking on and treating septic effluent; and inability to protect onsite and offsite environmental resources from erosion.

For instance, according to commenters, erosion and sediment control problems with the Mountain Valley Pipeline project may have resulted from a failure to conduct a proper soil survey by a licensed professional soil scientist. However, erosion and mudslide issues may also be attributed to the steep landscape, rather than a flawed soil survey.

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[5] Subsection B.2 of § 54.1-2201 allows licensed professional engineers, landscape architects, and land surveyors to render soil evaluation services as part of their work.

[6] In February 2011, when the General Assembly considered increasing the degree of regulation, Virginia regulated 136 certified soil scientists.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued licensure of soil scientists. Of 84 total comments received regarding soil scientists, 31% self-identified as non-practitioners.

The two commenters in opposition, one of whom self-identified as a licensee, cited among other reasons the size of the regulant population as being too small to warrant continued government regulation.

Total Comments in Support of Continued Regulation	82 (98%)
Total Comments Opposed to Continued Regulation	2 (2%)

Comments from Non-Practitioners in Support of Continued Regulation	26
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

All 50 states regulate soil scientists to some degree. Virginia and eight other jurisdictions currently license soil scientists, and 41 states administer voluntary certification programs.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Builders, homeowners, farmers, real estate professionals, and governmental entities are among the population that engages soil scientists for a variety of public and private land development purposes such as erosion control, environmental impact studies, storm water and sludge management, mine reclamation, site restoration, ecological evaluations, waste application, nutrient management services, and suitability studies for moisture retention or drainage.

The Soil Science Society of America (SSSA) offers national certification that could serve as an alternative to state regulation; in fact, the exams for the national Certified Professional Soil Scientist designation are the same ones used to qualify for Virginia's existing soil scientist license. Additionally, licensed professional engineers, landscape architects, and land surveyors are authorized to engage in the practice of soil evaluation pursuant to subsection B.2 of § 54.1-2201.

If the profession is deregulated, nationally credentialed substitutes may be available to meet demand. However, according to public comment, in at least one instance a locality would only accept work performed by a licensed soil scientist. (Acceptance of work by regulated substitutes could be addressed through guidance or clarifying legislation if necessary.)

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed professional soil scientists must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 145-20-160 et seq.).

SSSA requires adherence to its published Code of Ethics as a condition of national certification.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Soil science is a specialized field and it is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Prospective employers of soil scientists to work in government or academic settings, however, likely have the ability to verify their competency.

A system of certification appears to be least least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of soil scientists.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

SSSA requires adherence to its published Code of Ethics, which includes mandatory reporting by nationally certified individuals of certificate holders who have deviated from professional standards. In addition, SSSA-certified individuals must complete at least 30 continuing education units every two years as a condition of renewal.

The professional association also investigates complaints of potential violations and may impose sanctions including suspension or revocation of certification.[7]

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed soil scientists resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of other regulated professionals, government and academic employers, and permitting authorities in the process associated with soil science practice may be adequate to mitigate risks to public health, safety, and welfare.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although soil science is a specialized field, the risk of incompetent practice is mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities in the process.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Public- and private-sector entities often hire soil scientists to work on major land use or infrastructure projects, such as the construction and installation of oil and gas pipelines, which exposes the public to

[7] https://www.soils.org/files/certifications/cpss-cpsc/2015-sssa-cpss-cpsc-complaint-investigation-procedures.pdf

financial, environmental, and health hazards. However, the risk of incompetent practice is mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities in the process.

Assessment

Certification appears to be the most appropriate, least-restrictive level of regulation for soil scientists.

RISK	Moderate potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; often collaborating with other regulated professionals; oversight of practice actions by permitting authorities.
SCOPE OF PRACTICE	Definable in enforceable legal terms; other licensed professionals allowed to practice under exemption.

The General Assembly may wish to consider reverting to the voluntary state certification (title protection) that existed prior to 2013, or relying entirely on the national Certified Professional Soil Scientist designation as an alternative to state regulation.

Waste Management Facility Operators

JLARC found little added benefit associated with the licensing requirement for individuals who manage the daily operations of solid waste facilities; its report suggested public risks are adequately addressed by regulation of such facilities (e.g., landfills and transfer stations) by the Virginia Department of Environmental Quality (DEQ). Additionally, JLARC noted the Board for Waste Management Facility Operators rarely meets due to a lack of business and that existing national certifications are available to verify qualifications for operators as an alternative to state regulation.

Waste management facility operators are defined in § 54.1-2209 as "any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation." Four distinct license classes are available depending on an individual's demonstrated competency level. A waste management facility is defined by statute as "a site used for planned treatment, storage or disposal of nonhazardous solid waste."

The General Assembly created the Board for Waste Management Facility Operators in 1991 and provided a two-year delayed effective date for the licensing requirement. The Board administers and enforces the regulatory program; establishes training criteria and approves training providers; and licenses qualified individuals.

As of December 1, 2020, Virginia licensed 647 waste management facility operators (100% of that board's regulant population.)

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

Waste management facility operators do not perform services for individuals and present low risk to the public if unregulated.

Potential hazards to public health, safety, or welfare from incompetent practice—including groundwater contamination, improper venting of landfill gases, or vermin infestation—are mitigated by strict oversight of the facilities by DEQ, the primary state agency responsible for protecting human health and the environment in this field.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment received regarding waste management facility operators was unanimously supportive. All four commenters self-identified as non-practitioners.

Total Comments in Support of Continued Regulation	4 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	4
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

According to JLARC, 22 other states also regulate waste management facility operators, although some jurisdictions require operators to hold a national certification.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires waste management operator services. Waste management facilities are DEQ-regulated sites used for the planned treatment, storage, or disposal of non-hazardous solid waste.

If the profession is deregulated, substitutes appear available to meet demand. Alternatives to state regulation include the Solid Waste Association of North America (SWANA) Manager of Landfill Operations certification and the National Waste & Recycling Association (NWRA) Certified Landfill Manager certification.

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed waste management facility operators must comply with standards of practice and conduct enumerated in board regulations (18 VAC 155-20-285).

Additionally, DEQ indirectly regulates the standards of public responsibility necessary to protect environmental and human health at waste management facilities.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Waste management facility operators do not provide direct services to consumers or the public, who likely would not be able to select a qualified practitioner without assurance of minimum competency. However, operators are employed by DEQ-regulated facilities whose owners can reasonably be expected to have the ability to verify competency.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

SWANA requires certified Managers of Landfill Operations to complete 30 continuing education units every three years as a condition of renewal.

In addition, JLARC noted that potential risks presented by incompetent, unscrupulous, or irresponsible operators are adequately addressed by DEQ as the primary state agency responsible for protecting human health and the environment in this field.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed waste management facility operators resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The current statutory and regulatory framework of DEQ oversight of waste management facilities appears adequate to protect public health, safety, and welfare.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although waste management facility operation is a specialized field, strict regulation of waste management facilities by DEQ mitigates the relatively low risk of incompetent practice by operators.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Although waste management facility operators do not provide direct services to consumers, their work can expose the public to environmental and health hazards. However, the risk of incompetent practice by operators is low and mitigated by strict regulation of waste management facilities by DEQ.

Assessment

No level of occupational regulation appears warranted for waste management facility operators.

RISK	Low potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; majority of practice actions supervised by DEQ.
SCOPE OF PRACTICE	Definable in enforceable legal terms.

The General Assembly may wish to consider eliminating the licensing requirement and rely instead on existing DEQ oversight of waste management facilities. DEQ could require operators to obtain and maintain private-sector national certification as an alternative to state regulation.

If deregulated, existing licensees would be relieved of the regulatory obligation to complete eight hours of continuing education and pay a $50 fee every two years to renew their state credential.

Landscape Architects

In its report, JLARC acknowledged potential harm to the public from incompetent practice of landscape architecture; however, it concluded that licensure of landscape architects does not effectively address such risks because unregulated occupations (e.g., landscape designers, land planners) perform largely the same work and present the same potential dangers.

A landscape architect is defined in § 54.1-400 as follows:

> ". . . a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through licensure as a landscape architect."

Statute further defines the practice of landscape architecture:

> ". . . any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land."

However, the law does not restrict the scope of practice only to licensed landscape architects who use that title.[8] Subsection B of § 54.1-409 states:

> Nothing contained herein or in the definition of "practice of landscape architecture" or in the definition of "landscape architect" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any architect, professional engineer, land surveyor, nurseryman, landscape designer, landscape contractor, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist, irrigation designer, horticulturist, arborist, or any other similar person from engaging in their occupation or the practice of their profession or from rendering any service in connection therewith that is not otherwise proscribed.

Initially, the legislature created the regulatory program governing landscape architects as a voluntary certification in 1980. During the 2009 Session of the General Assembly, the level of regulation increased to licensure with an effective date of July 1, 2010.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA) administers and enforces the regulatory program for landscape architects. As of December 1, 2020, Virginia regulated 931 landscape architects,[9] composing 2.1% of that board's regulant population.

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[8] Subsection A of § 54.1-409 states, in part, "Beginning July 1, 2010, a person who ***engages in the practice*** of landscape architecture as defined in § 54.1-400 **and** who ***holds himself out as a landscape architect*** shall hold a valid license prior to engaging in such practice." [emphasis added]

[9] In February 2009, when the General Assembly considered increasing the degree of regulation, Virginia certified 820 landscape architects.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of landscape architecture presents high risk of public harm. In addition to property damage and financial harm, incompetence may result in serious injury and even death. In a 2017 publication entitled *Landscape Architecture Licensing Handbook*, the American Society of Landscape Architects (ALSA) provided empirical examples of physical harm—not specific to Virginia—such as:

- Electrocution death from negligent outdoor lighting;
- Second- and third-degree burns from improperly placed lighting in outdoor shrubbery;
- Skull fractures, permanent loss of vision, quadriplegia, and death from obstructed views at intersections;
- Eye injury from an inappropriately placed thorny tree in apartment complex common area;
- Broken spine from 20-foot fall off "soft edge" of poorly designed recreational trail;
- Death after falling from parking lot designed without guardrail or fence to prevent drop-off;
- Fractured hip from trip-and-fall because of building threshold grading error; and
- Fatality linked to a fire ant attack from irrigation design defects that unevenly applied water and hampered pest control efforts.

As JLARC noted, however, Virginia's existing regulatory program may not effectively address the risks because unregulated individuals are allowed to perform similar work.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued licensure of landscape architects. Of 253 total comments received regarding landscape architects, 26% self-identified as non-practitioners, including affiliated design professionals who rely on the services licensed landscape architects provide.

Total Comments in Support of Continued Regulation	253 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	65
Comments from Non-Practitioners Opposed to Continued Regulation	0

In addition, according to the Alliance for Responsible Professional Licensing (ARPL)—a consortium of national trade associations including ASLA and the Council of Landscape Architectural Registration Boards (CLARB)—consumers overwhelmingly endorsed continued licensure for landscape architects and other "highly technical professions" in national opinion survey.[10]

[10] *See* http://www.responsiblelicensing.org/fast-facts/

3. The number of states which have regulatory provisions similar to those proposed.

Virginia and 46 other states—as well as the District of Columbia and Puerto Rico—currently license landscape architects through regulation of practice and title. Maine and Massachusetts regulate landscape architects through title protection only.

Illinois sunset its title protection act for landscape architects effective January 1, 2020. Legislation to reinstate its regulatory program is pending as the Illinois General Assembly canceled its fall session due to COVID-19.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires landscape architecture services for a variety of public and private land development purposes such as site plans, vehicular roadway and pedestrian system designs, storm water and erosion control plans, and siting of buildings and structures. Increased frequency of coastal flooding and the threat of sea level rise is likely to increase demand for landscape architects.

In addition, demand for the regulated profession is reflected through Virginia's top-ranked landscape architecture degree programs: the undergraduate and graduate programs at Virginia Tech and the graduate program at the University of Virginia. Public commenters noted that both programs attract outstanding candidates from the Commonwealth, the United States, and worldwide, and suggested deregulation or voluntary certification may result in reduced enrollments and recent graduates leaving Virginia for states with licensure programs.

If the profession is deregulated, there is no regulated substitute for landscape architects (although some practice overlap exists with other licensed design professionals such as architects and professional engineers).

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed landscape architects must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 10-20-690 et seq.).

ASLA requires adherence to its published Code of Professional Ethics for members. In addition, members must abide by ASLA's Code of Environmental Ethics. (Membership in the professional association is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

The practice of landscape architecture is highly specialized and requires practitioners to demonstrate minimum competency in areas including ecological systems; hydrology; land use and zoning; construction methods and building codes; accessibility standards; and federal, state, and local environmental laws.

It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Public commenters also indicated that the design and

construction industry that relies on the services of landscape architects is similarly ill equipped to evaluate their competency without the assurance licensure provides.[11]

Regulation of practice and title appears necessary to provide the public with a substantial basis for relying on the services of landscape architects.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

ASLA requires adherence to its published Code of Professional Ethics, which includes mandatory reporting by members of violations by other members. The professional association also investigates complaints of potential violations and may impose sanctions including member suspension or expulsion.[12]

(Membership in the professional association is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed landscape architects resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Building codes and inspections, local land use and zoning ordinances, and other licensed design professionals are likely inadequate to protect the public from incompetent landscape design practice. Additionally, as JLARC noted, the current regulatory framework may not be effective or adequate at addressing risk because unregulated occupations (e.g., landscape designers, land planners) can perform similar work and present the same potential dangers.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although affiliated design professionals collaborate frequently, which mitigates the risk of incompetent practice, they do not possess the same specialized knowledge to evaluate the competency of landscape architects.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Whether landscape architects are designing a private residential project or working on a public-sector commercial site, their services affect the health, safety, and welfare of third parties who eventually use those spaces.

[11] *See* https://www.vaasla.org/VA-ASLA-Virginia-White-Paper/

[12] *See* ASLA's Rules of Procedure for Filing and Resolution of a Complaint

Assessment

Licensure appears to be the most appropriate, least-restrictive level of regulation for landscape architects.

RISK	High potential.
SKILL + TRAINING	Highly specialized education required.
AUTONOMY	Largely autonomous practice, though often collaborating with other licensed professionals; little or no direct supervision.
SCOPE OF PRACTICE	Definable in enforceable legal terms; some practice overlap with other licensed professionals and unregulated individuals.

To address concerns raised by JLARC about potential public harm presented by unregulated occupations performing largely the same services, the General Assembly may wish to consider reserving aspects of the scope of practice only to licensed professionals.

Assessment of potential impact of de-certification

In its 2018 report, JLARC determined several currently voluntary certification programs established by the General Assembly and administered by DPOR are unnecessary (see Table 2-3 from JLARC report below).

TABLE 2-3
Some DPOR certifications are duplicative of national certifications

	National certification exists?	Qualification requirements are similar?
Community manager employees 296 regulants	✓	✓
Interior designers 491 regulants	✓	✓
Backflow prevention device workers 1,377 regulants	✓	✓
Natural gas auto mechanics 0 regulants	✓	✓
Wetland delineators 114 regulants	✓	

Although its analysis suggested these occupations do not meet the statutory criteria for regulation, JLARC acknowledged that eliminating state certification may harm current certificate holders due to lack of uniformity and increased economic costs.

Therefore, before the General Assembly takes any action, JLARC recommended that BPOR review the need for continued state certification and evaluate potential impacts of deregulation on existing regulants.

Common Interest Community Manager Employees

According to JLARC's analysis, regulation of community manager employees is unwarranted, overly burdensome, and completely duplicative of national certifications. The report noted:

> For community manager employees, individuals with one of three nationally recognized credentials in community management automatically qualify for a state certificate. This equivalency means that the national and state certifications are essentially interchangeable.

In terms of potential harm, JLARC estimated the risk to be low because associations are already required to be bonded or insured against losses from theft or dishonesty by managers and their employees.

During the 2008 Session of the General Assembly, the legislature created the Common Interest Community Board to regulate common interest community (CIC) managers as well as their principal or supervisory employees. Pursuant to subsection C of § 54.1-2346, a prerequisite for CIC managers to obtain or renew licensure includes ensuring their covered employees, defined below, are properly certified:

> ". . . all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager."

As of December 1, 2020, Virginia regulated 313 CIC manager employees (also referred to as certified principal or supervisory employees), composing 65% of that board's non-association regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

CIC manager employees present no risk *to the public* if unregulated. The harm they may present to *association members* from financial abuse or mismanagement is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance against losses from theft or dishonesty by managers and their employees.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued regulation of CIC managers or their employees. (Many comments focused on licensure of CIC managers specifically, which was outside the scope of this evaluation.)

Of 20 total comments received regarding CIC managers or their employees, 25% self-identified as non-practitioners who work with or rely on the services provided by licensed CIC managers or certificate holders.

Total Comments in Support of Continued Regulation	19 (95%)
Total Comments Opposed to Continued Regulation	1 (5%)

Comments from Non-Practitioners in Support of Continued Regulation	5
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

In addition to Virginia, seven other states regulate CIC managers or their employees to some extent. Colorado eliminated its licensing program for CIC managers effective June 30, 2019.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Virginia regulated 169 CIC managers and 313 CIC manager employees as of December 1, 2020. Substitutes are available to meet demand for certified CIC manager employees if the profession is deregulated.

The following national credentials currently qualify an individual for Virginia's CIC manager employee certificate and could serve as an alternative to state regulation:

- Association Management Specialist (AMS)
- Certified Manager of Community Associations (CMCA)
- Professional Community Association Manager (PCAM)

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified CIC manager employees must comply with Standards of Conduct and Practice enumerated in board regulations (18 VAC 48-50-140 et seq.).

Community Associations Institute (CAI) requires adherence to its published Code of Ethics as a condition of national certification as an AMS or PCAM.

The Community Association Managers International Certification Board (CAMICB) requires CMCA-certificate holders to comply with its Standards of Professional Conduct.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

CIC manager employees are hired by licensed CIC managers to provide services to associations, not consumers or the public. Because eligibility requirements for CAI and CAMICB credentials are equivalent to the entry standards for state certification, management companies and association governing boards can rely on the national designations to provide assurance of minimum competency.

Potential harm to association members from financial abuse or mismanagement is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance to protect against losses from theft or dishonesty by managers and their employees.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

CAI and CAMICB require adherence to published codes of conduct, which include mandatory reporting by certified individuals of other certificate holders who have deviated from professional standards. In addition, CAI-certified individuals must complete continuing education every three years as a condition of renewal.

The professional associations also investigate complaints of potential violations and may impose sanctions including suspension or revocation of certification.[13]

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against CIC manager employees resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Statutory requirements for associations and licensed CIC managers to maintain continuous bonding or insurance to protect against losses from employee theft or dishonesty appear adequate to mitigate risks of harm.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Statutory requirements for bonding or insurance to protect against losses from employee theft or dishonesty mitigate risk of incompetent practice by CIC manager employees, who do not provide direct services to consumers or the public. In addition, CIC managers are responsible for overseeing the practice actions of their employees.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Although CIC manager employees do not provide direct services to consumers or the public, their work can expose owners in common interest communities to potential harm. However, the risk of incompetent practice is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance against losses from employee theft or dishonesty.

Assessment

No level of occupational regulation appears warranted for CIC manager employees.

RISK	N/A
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.

[13] *See* https://www.caionline.org/LearningCenter/credentials/Documents/ethics_enforcement.pdf and https://www.camicb.org/SiteCollectionDocuments/CAMICB%20Enforcement%20Procedures.pdf

AUTONOMY	Variable; majority of practice actions directed or supervised by licensed CIC Manager.
SCOPE OF PRACTICE	Definable in enforceable legal terms.

The General Assembly may wish to consider eliminating the certification requirement and rely instead on national designations as an alternative to state regulation, together with statutory requirements for associations to maintain continuous bonding or insurance against losses from employee theft or dishonesty.

If deregulated, existing certificate holders would be relieved of the obligation to pay a $75 fee every two years to renew their state credential. Individuals who qualified for their Virginia certificate based on holding a national designation from CAI or CAMICB could maintain their private certification.

AMS Certification requires an annual maintenance fee of $85 for CAI members and $310 for non-members. To recertify, AMS certificate holders must complete one CAI course and eight hours of other industry-related continuing education every three years.

PCAM Certification requires an annual maintenance fee of $160 for CAI members and $385 for non-members. To recertify, PCAM certificate holders must complete 12 hours of continuing education every three years.

CMCA Certification from CAMICB requires an annual service fee of $115. To recertify, CMCA certificate holders must complete 16 hours of continuing education every two years.

Interior Designers

In its report, JLARC determined the requirements for national and state certification of interior designers are nearly identical. It concluded that continued regulation appears unnecessary and "offers no additional assurance of competency for this occupation."

Certified interior designers are defined in § 54.1-400 as "a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer."

Statute further defines interior design by a certified interior designer as:

> ". . . any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for non load-bearing interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public."

The title protection law—enacted during the 1990 Session of the General Assembly—does not restrict the scope of practice and serves as the framework for the voluntary certification program. While only state-certified interior designers may use the title, any individual may render services as an interior designer, interior decorator, or similar.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA) administers and enforces the regulatory program for certified interior designers. As of December 1, 2020, Virginia regulated 483 certified interior designers, composing 1.1% of that board's regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of interior design presents at least a moderate risk of public harm. The involvement of other regulated design professionals or building codes and inspections may not be sufficient to mitigate potential hazards to public health, safety, and welfare.

Although interior designers can perform residential work, many focus on public spaces such as hospitals, schools, nursing homes, government facilities, and office buildings. Minimally competent interior design services protect the public by, for instance:

- Ensuring safe evacuation from interior spaces in emergency situations, by planning clear circulation paths that lead to building exits;
- Minimizing fire and toxic smoke hazards, through knowledge of fire ratings and material properties for different types of interior spaces;
- Reducing accidental injuries due to falls, by applying technical knowledge of friction coefficient, a factor in slip resistance, for high-traffic areas such as public building entrances and lobbies; and
- Specifying proper lighting fixtures, to ensure ability to see transitions in floor levels, read directional signage, and impart an overall feeling of safety.

Public commenters underscored the potentially significant risk, especially in light of the pandemic as health care facilities have required redesign and space planning to accommodate COVID surges and as Virginians return to stores, offices, and schools. For example, the National Fire Protection Association (NFPA) recently emphasized services offered by interior designers—egress management, occupant flow, partition placement, and seating arrangements—as areas of particular importance for building owners and facility managers reopening under COVID-19 safety protocols in its Fire and Life Safety Checklist.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued certification of interior designers. Of 419 total comments received regarding interior designers, 27% self-identified as non-practitioners.

Among the non-practitioners, 57 volunteered that they work with or rely on the services provided by certified interior designers. (The other non-practitioner respondents did not specify their relationship to the profession.)

Total Comments in Support of Continued Regulation	418 (99.8%)
Total Comments Opposed to Continued Regulation	1 (0.2%)

Comments from Non-Practitioners in Support of Continued Regulation	113
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

Effective July 1, 2020, Florida transitioned its regulatory program for interior designers to voluntary certification, leaving two states (Louisiana and Nevada)—as well as the District of Columbia and Puerto Rico—that license interior designers through regulation of practice and title.

Twenty-five states (including Virginia and, now, Florida) certify interior designers through title protection only. The profession is unregulated in the remaining 23 states.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires interior design services provided through public and private contracts for construction or renovation at hospitals, schools, nursing homes, office buildings, and government facilities.

The National Council for Interior Design Qualification (NCIDQ) administers the exam used to qualify for Virginia's existing interior design certification, and also offers national certification for those who pass the competency assessment. According to the NCIDQ online searchable database, there are at least 500 active NCIDQ certificate holders in Virginia.[14]

However, according to public commenters including the NCIDQ Chief Executive Officer, the national certification is not an alternative to state regulation because the organization is not a sanctioning body

[14] Retrieved December 5, 2020, from https://www.cidq.org/certified-designer-search-page.

and does not evaluate competency to practice beyond initial exam administration. If the profession is deregulated, there is no equivalent regulated substitute.

5. **Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.**

Certified interior designers must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 10-20-690 et seq.).

NCIDQ requires adherence to its published Code of Ethics for certificate holders.

The American Society of Interior Designers (ASID) requires adherence to its published Code of Ethics and Professional Conduct for members. Members of the International Interior Design Association (IIDA) must observe its Code of Ethics as well.

(Membership in professional associations is optional; not every individual engaged in practice is obligated to join or follow an organization's standards.)

6. **Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.**

The practice of interior design is specialized and requires practitioners to demonstrate competency in areas including fire, life-safety, building, and energy codes; space planning and wayfinding; interior building materials, finishes, furnishings, and equipment; lighting and acoustics; accessibility standards; ergonomics and anthropometrics; and human environmental behavior.

It is unlikely that consumers or the public would be able to select a qualified practitioner without some assurance of minimum competency. Eligibility requirements for NCIDQ Certification provide sufficient assurance of minimum qualifications to enter (though not necessarily remain in) the profession.

A system of certification appears to be least least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of interior designers.

7. **Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.**

NCIDQ certificate holders must complete six hours of continuing education every two years. However, the organization is not a sanctioning body and does not investigate or discipline incompetent practice by individuals who are nationally certified.

ASID requires adherence to its published Code of Ethics and Professional Conduct, which includes mandatory reporting by members of violations by other members. Additionally, ASID members must complete 10 hours of continuing education every two years as a condition of renewal. ASID investigates complaints of potential violations and may impose sanctions including suspension or termination of membership.[15]

[15] *See* https://www.asid.org/resources/about/ethics/file-a-complaint

(Membership in ASID is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified interior designers resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of other regulated design professionals or building codes and inspections may not be adequate to mitigate potential hazards to public health, safety, and welfare. For instance, public commenters noted that incremental interior changes over the life of a public space—e.g., reconfiguration of open office and systems furniture, replacement of finishes such as wallcovering and flooring, moveable modular wall panels—often introduce potential hazards but generally do not require external oversight.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Interior design is a specialized field. The involvement of other regulated design professionals or building codes and inspections may not be sufficient to mitigate potential hazards to public health, safety, and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Whether certified interior designers are working on a private residential project or a public-sector commercial site, their services affect the health, safety, and welfare of third parties (e.g., guests, patients, students, visitors, employees) who eventually use those spaces.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for interior designers.

RISK	Moderate potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Largely autonomous practice, though often collaborating with other regulated professionals; little or no direct supervision.
SCOPE OF PRACTICE	Definable in enforceable legal terms; practice not reserved; title protection.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC's recommendation to eliminate state certification and instead rely on NCIDQ national certification as an alternative.

If deregulated, current certified interior designers would be relieved of the obligation to pay a $45 fee every two years to renew their state credential. Individuals who choose to maintain NCIDQ Certification as an alternative would pay $75 annually to the national association and complete six hours of continuing education every two years.

Public commenters expressed concern that deregulation could result in significant economic disruption for current certificate holders by jeopardizing their practice rights and entrepreneurship opportunities. Elimination of state certification would result in interior designers losing the autonomy to practice without oversight from a licensed design professional. For example, interior designers would need to hire consulting architects or professional engineers to stamp their work, at increased cost to their businesses and clients.

In addition, because statutes governing professional corporations require owners and principals be licensed or state certified,[16] deregulation would prevent interior designers from board participation at regulated design firms. According to IIDA, of the nearly 1,300 interior design firms in Virginia, 96% are small businesses of four or fewer employees, and 83% are women- or minority-owned. National certification does not confer practice rights and would not allow interior designers to become owners and principals of regulated design firms.

Commenters also indicated that deregulation might unfairly exclude current certified interior designers from competition for federal, state, and local contracts that often require work be completed by regulated professionals. For instance, the standard U.S. General Services Administration (GSA) form used to report qualifications for key personnel on proposed federal contracts requires "information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36."

However, if the Virginia certification program is eliminated, Federal Acquisition Regulation (FAR) Part 36.609-4(b) allows solicitations to omit the designer registration requirement, "when the design will be performed in a State or outlying area of the United States that does not have registration requirements for the particular field involved."[17]

Although existing Virginia certificate holders qualify for the national designation, NCIDQ Certification is not an equivalent substitute for state regulation and may not adequately protect the public. NCIDQ is not a sanctioning body and does not investigate or discipline incompetent practice by individuals who hold national certification.

[16] *See* §§ 13.1-549 and 13.1-1111 of the Code of Virginia

[17] *See* https://www.acquisition.gov/far/part-36#FAR_36_609_4

Backflow Prevention Device Workers

JLARC's analysis concluded the regulatory program for backflow prevention device workers is unnecessary and "largely duplicative of national and local training certifications." Its report cited the establishment of a uniform credential for recognition across localities as a primary rationale for requiring state certification; however, occupational recognition is not one of the statutory criteria for regulation.

A backflow prevention device worker is defined in § 54.1-1128 as follows:

> ". . . any individual who engages in, or offers to engage in, the maintenance, repair, testing, or periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check-valve assemblies, double-detector check-valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of non-potable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use."

During the 1996 Session of the General Assembly, the legislature transferred regulation of backflow prevention device workers from localities to DPOR, with a delayed implementation date of July 1, 1998. Localities are required to accept state certification as proof of minimum competency, but may impose restrictions on uncertified backflow prevention device workers.

The Board for Contractors administers and enforces the regulatory program for backflow prevention device workers. As of December 1, 2020, Virginia certified 1,468 backflow prevention device workers; composing 1.7% of that board's regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

Backflow prevention device workers perform a service with high potential for public harm because incompetent practice can result in the contamination of our water supply.

Building codes and inspections alone are likely inadequate to protect the public from the risks of incompetent practice.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued certification of backflow prevention device workers. Of 78 total comments received regarding backflow prevention device workers, 38% self-identified as non-practitioners, many representing local governments and utility providers that rely on the services provided by certificate holders.

Among the commenters advocating for continued state regulation:

- Augusta County Service Authority
- City of Chesapeake

- Chesterfield County Buildings and Grounds
- Fairfax County Land Development Services
- Hampton Roads Planning District Commission
- Henrico County Public Utilities
- Isle of Wight County Utility Services
- James City Service Authority
- Lynchburg Water Resources
- Newport News Waterworks Department

Total Comments in Support of Continued Regulation	78 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	30
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

All 50 states regulate the services provided by backflow prevention device workers to some degree. Approaches vary widely, ranging from state-administered licensure programs to private-sector certification required at the local level.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires the services provided by backflow prevention device workers to prevent contamination of our water supply.

Licensed plumbers and HVAC tradesmen are also qualified to perform the work; however, it is unlikely an adequate supply of those tradesmen would be available to meet demand given existing shortages in those fields. If the profession is deregulated, a variety of private third-party credentials could serve as alternatives to state regulation.

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified backflow prevention device workers must comply with Standards of Conduct enumerated in board regulations (18 VAC 50-30-185).

By its nature, the occupation demands high standards because backflow prevention device workers are entrusted to keep our water supply safe for consumption and use.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Backflow prevention is a specialized trade. It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Local governments and utility providers that employ backflow prevention device workers, however, likely have the ability to verify their competency.

A system of certification appears to be least least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of backflow prevention device workers.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

Several associations offering certifications for backflow prevention device workers assess competency to practice through refresher courses, re-examination, or continuing education as a condition of renewal.

(Membership in a professional association is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified backflow prevention device workers resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Building codes and inspections alone are inadequate to protect the public from the significant risks of incompetent practice.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Backflow prevention is a specialized trade. Building codes and inspections alone are not sufficient to protect the public from the significant risks of incompetent practice.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

The services provided by backflow prevention device workers, if performed incompetently, risk contaminating the water supply and making it unfit or unsafe for consumption and use by third parties.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for backflow prevention device workers.

RISK	High potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; majority of practice actions directed or supervised by others.
SCOPE OF PRACTICE	Definable in enforceable legal terms; some practice overlap with licensed professionals.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC's recommendation to eliminate state certification and instead rely on national or local certifications as alternatives.

If deregulated, current certified backflow prevention device workers would be relieved of the obligation to complete eight hours of continuing education[18] and pay a $50 fee every two years to renew their state credential.

However, deregulation may significantly increase the compliance burden on current certificate holders, particularly for those who work in more than one locality if those jurisdictions require different credentials. Depending on the particular training program an individual completed to obtain state certification, they may not qualify automatically for whatever private credential a locality might require.

For instance, if a current certified backflow prevention device worker does not already hold a credential from the American Society of Sanitary Engineering (ASSE), in order to obtain ASSE Backflow Prevention Assembly Tester certification he will need to:

- Complete the ASSE-approved training course (ranging from $800-$1000);
- Pass written and practical end-of-course exams; and
- Pay the $85 membership fee to ASSE.

Recertification is required every three years to maintain ASSE certification, by completing an approved refresher course (ranging from $375-$525) and passing written and practical end-of-course exams.

Finally, deregulation conflicts with an in-process Virginia Department of Health regulatory action to amend its Waterworks Regulations. The proposed action, now at the final stage, would mandate that anyone who tests and repairs backflow prevention assemblies and devices be a DPOR-certified backflow prevention device worker (effective January 1, 2022).

[18] Certificate holders in their first two-year renewal cycle are exempt from the continuing education requirement (18 VAC 155-20-160.D).

Wetland Delineators

JLARC determined the Virginia regulatory program for wetland delineators is unnecessary because national certification is available as a professional wetland scientist. However, although existing Virginia certificate holders likely qualify for the national certification, the third-party credential is not equivalent and may not offer the same public protection.

A Virginia certified professional wetland delineator is defined in § 54.1-2200 as "a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board." By comparison, non-certified wetland professionals are defined as "having special knowledge of wetland science and the methods and principles of wetland delineation[19] as acquired by education and experience in the formation, description and mapping of wetlands."

Statute further defines the practice of wetland delineation as:

> ". . . the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings."

The title protection law—enacted during the 2002 Session of the General Assembly with a two-year delayed effective date—does not restrict the scope of practice and serves as the framework for the voluntary certification program. While only certified professional wetland delineators may use the title, any individual may practice wetland delineation as a wetland professional.

The Board for Soil Scientists, Wetland Professionals, and Geologists administers and enforces the regulatory program. As of December 1, 2020, Virginia regulated 116 certified professional wetland delineators, composing 9.8% of that board's regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of wetland delineation presents a low risk of public harm. Potential hazards to public health, safety, or welfare are mitigated by the involvement of other regulated professionals, permitting authorities, and regulatory agencies.

According to public commenters, the tangible public harm that initially led to creation of Virginia's landmark certification program—the first in the nation—was permitting problems and lawsuits against regulatory authorities resulting from unqualified individuals performing wetland delineations in the 1990s.

[19] Wetland delineation means "delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types" (§ 54.1-2200).

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued certification of wetland delineators. Of 142 total comments received regarding wetland delineators, 56% self-identified as non-practitioners.

Among the non-practitioners, 38 volunteered that they are industry partners who work with or rely on the services provided by certified professional wetland delineators. (The other non-practitioner respondents did not specify their relationship to the profession.)

Total Comments in Support of Continued Regulation	142 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	80
Comments from Non-Practitioners Opposed to Continued Regulation	0

Industry partners advocating for continued state certification cited the importance of wetland delineators assisting with permitting processes and possessing knowledge of Virginia-specific tidal and wetland ecology, a competency not required by the national credential.

3. The number of states which have regulatory provisions similar to those proposed.

Three other states (Minnesota, New Hampshire, and Wisconsin) also certify wetland delineators. No states license the practice of wetland delineation.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Landowners and developers hire wetland delineators to identify the location and physical limits of wetlands; assess functions and values; assist with regulatory issues and permits; and advise on mitigation planning. Regulatory agencies often also engage their services for third-party review.

Public commenters indicated that demand for wetland delineators is increasing due to the dynamic composition of wetlands, sea level rise, and the redefinition of "adjacent wetlands" under the Navigable Waters Protection Rule.[20] According to DEQ, the recent U.S. Environmental Protection Agency (EPA) action does not replace or supersede state authority for permitting impacts to state waters.[21] Therefore, Virginia may require more qualified practitioners for permitting activities affecting state wetlands that are no longer regulated by the federal government.

If the profession is deregulated, there is no equivalent regulated substitute. The Society of Wetland Scientists offers national certification as a Professional Wetland Scientist (PWS) that could serve as an alternative. However, public commenters emphasized that the national credential is inadequate to meet the demand for services provided by qualified wetland delineators who possess knowledge of Virginia-specific tidal and wetland ecology. The state certification exam also covers local and state regulations, crucial competencies not covered by any national credential.

[20] *See* https://www.epa.gov/nwpr

[21] *See* https://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified professional wetland delineators must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 145-30-140 et seq.).

The Society of Wetland Scientists requires adherence to its published Code of Ethics as a condition of national certification.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

The practice of wetland delineators is specialized. Certified professional wetland delineators must demonstrate minimum competency in four distinct areas: botany, soil science, hydrology, and state-specific tidal wetland definition. It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency.

Eligibility requirements for PWS Certification appear to provide sufficient assurance of minimum competency in wetland science generally, though not wetland delineation in particular nor practice specific to Virginia.

A system of certification appears to be least least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of wetland delineators.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

The Society of Wetland Scientists requires adherence to its published Code of Ethics, which includes mandatory reporting by PWS certificate holders of violations by other nationally certified individuals. In addition, PWS certificate holders must complete continuing education every five years as a condition of renewal.

The professional association also investigates complaints of potential violations and may impose sanctions including probation or de-certification.[22]

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified professional wetland delineators resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of regulatory agencies, permitting authorities, and licensed professionals who collaborate with wetland professionals may be adequate to mitigate risks to public health, safety, and

[22] *See* https://www.wetlandcert.org/docs/EthicsComplaintForm.pdf

welfare. According to public commenters, inspection and private civil action alone proved insufficient in the 1990s to protect against permitting problems resulting from incompetent practice.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Wetland delineation is a specialized field. The involvement of regulatory agencies, permitting authorities, and licensed professionals who collaborate with wetland professionals may be adequate to mitigate risks to public health, safety, and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Public- and private-sector entities hire wetland delineators to work on land use and infrastructure projects, so incompetent practice may expose the public to financial risk and jeopardize environmental resources.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for wetland delineators.

RISK	Low potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; often collaborating with other regulated professionals; oversight of practice actions by regulatory agencies and permitting authorities.
SCOPE OF PRACTICE	Definable in enforceable legal terms; title protection.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC's recommendation to eliminate state certification and instead rely on national certification as an alternative.

If deregulated, current certified professional wetland delineators would be relieved of the obligation to pay a $70 fee every two years to renew their state credential.

Individuals who pursue national certification as an alternative would apply for Professional Wetland Scientist (PWS) designation by submitting a $400 fee to the Society of Wetland Scientists; providing academic transcripts and professional references; and documenting their experience and publications in the area of wetland science.

Maintenance of PWS certification requires a $75 annual maintenance fee; individuals must renew every five years by paying a $100 recertification fee and satisfying continuing education requirements.

Although existing Virginia certificate holders likely qualify for the national certification, PWS Certification is not an equivalent substitute for state regulation and may not offer the same public protection. The national credential does not appear to provide sufficient assurance of minimum competency in Virginia-specific tidal and wetland ecology and local and state regulations.

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NCARB/CIDQ Comparison Report

Background

In December 2021, the National Council of Architectural Registration Boards (NCARB) and the Council for Interior Design Qualification (CIDQ) issued a joint report that assesses areas of correlation and distinction between the knowledge, skills, and tasks required for competency in the fields of architecture and interior design. NCARB and CIDQ are the nonprofit credentialing organizations that administer the Architect Registration Examination® (ARE®) and NCIDQ Examinations, respectively. The report's purpose is to enable a better understanding of the two professions' respective roles and responsibilities when it comes to protecting the public's health, safety, and welfare, ultimately leading to more effective collaboration and regulation.

Methodology

The effort began when NCARB's FY18 Interior Architecture Work Group was charged with comparing "interior design" and "interior architecture" degree programs, and eventually expanded to include a comparison of NCARB and CIDQ's most recent practice analyses. Each organization appointed subject matter experts (SMEs) who independently compared practice analyses and examination assessment objectives. The SMEs then met to review and explore findings, ultimately identifying areas of definite similarity, some similarity, or no similarity.

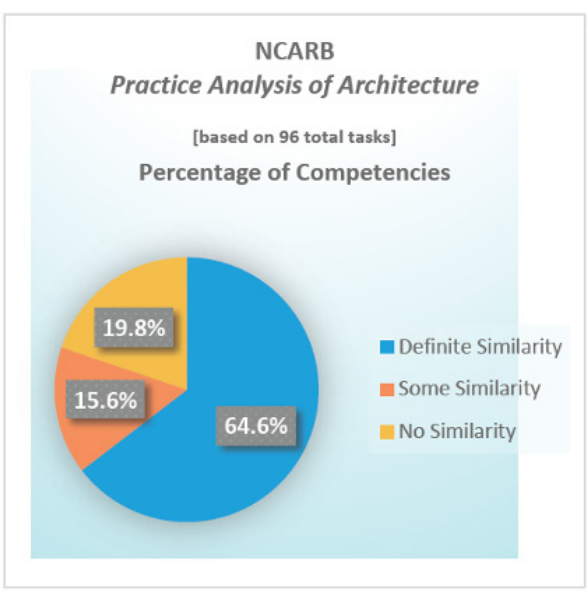
Findings

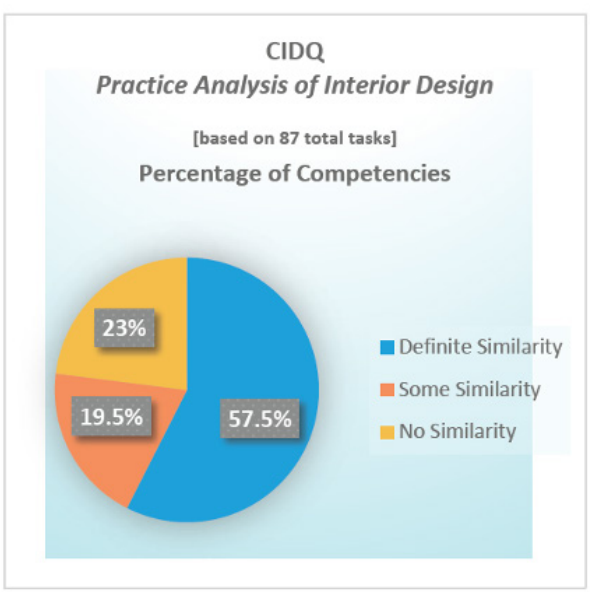
The report does not advocate that architecture and interior design are interchangeable, should be merged, or should become more connected. However, CIDQ and NCARB SMEs found that:

- The pathways to regulated practice for both architects and interior designers have the same basic requirements: Specialized education, relevant professional experience, and examination of essential knowledge and skills. In addition, NCARB and CIDQ follow a similar, well-established process to determine the requirements for experience and examination.
- Following careful research and discussion, NCARB and CIDQ identified several areas of definite similarity between the professions and their respective examinations, as well as areas where there is some similarity or no similarity. Areas of no similarity are equally as important as areas of some or definite similarity.
- While similar in practice and required knowledge, architecture and interior design are **unique and distinct disciplines that both have an important role** in protecting the health, safety, and welfare of the public within the built environment.

Practice Analysis Comparison

These charts show the proportion of tasks identified in each organization's most recent practice analysis that have definite, some, and no similarlity to tasks identified in the other organization's practice analysis. A practice analysis is a scientific study conducted periodically with practitioners of a profession to define the knowledge and skills they must possess and the tasks they must be able to perform at the time of licensure or credentialing.





Comparison of Exam Knowledge Areas

These charts show the proportion of each organization's examination objectives/knowledge areas that have definite, some, and no similarity to the other organization's examination objectives/knowledge areas.