



NORTH CAROLINA BOARD OF LANDSCAPE ARCHITECTS
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January 2, 2014

Chuck Hefren, Principal Program Evaluator
Program Evaluation Division
North Carolina General Assembly
Legislative Office Building, Suite 100
300 North Salisbury Street
Raleigh, NC 27603-5925

RE: Response to Proposed Elimination of Board of Landscape Architects; Report Number 2014-15

Dear Mr. Hefren:

I am the current Chair of the North Carolina Board of Landscape Architects (“Board”) and am responding to the report on occupational licensing agencies (OLAs) prepared by the Program Evaluation Division (PED) and submitted to the Joint Administrative Procedures Oversight Committee on December 17, 2014.

On behalf of the Board, I wish to express our thanks for the time spent by the Division in conducting this study. Albeit, as a Board, and on behalf of our profession and its licensees, we are very concerned that the Board of Landscape Architects has been identified as one of twelve OLAs whose licensing authority may be eliminated. **In our opinion, the practice of landscape architecture by unlicensed individuals would pose a threat to public health, safety, and welfare and potentially result in physical, environmental, and/or economic harm.** For this reason, all 50 states, three Canadian provinces, and Puerto Rico recognize the need for—and require the licensing of—landscape architects. This is precisely why the Board is very concerned about the PED's recommendation that could lead to the elimination of our licensing authority. Therefore, we appreciate the opportunity to provide written comments in response to the PED's report and, in doing so, communicate our two major concerns, which are further detailed below.

CONCERN #1: SCORING

One major concern is the scores resulting from the PED's assessment, which placed our Board in the group of twelve OLAs that "should be subject to further legislative review in order to ensure there is continued need for licensure." As presented in the PED's report, four measures were used to assess the performance of North Carolina's OLAs and, based on the PED's evaluation, the Board of Landscape Architects was considered to be deficient in three of the four measures used. In consideration of the evaluation criteria used and upon further review of the information provided to the PED as well as our records, we offer the following opinions and supplemental information with respect to those three measures.

One of the three measures was "public harm." Given the scope of the practice of landscape architecture as defined by the enabling statutes found in Chapter 89A of the General Statutes (N.C.G.S. §89A), landscape architects provide services that, if performed "by someone lacking the requisite competencies," could result in physical, environmental, or economic harm (e.g., the contamination of public drinking water). Recognition of this was the basis for the Practice Act, which amended the General Statutes in 1997 (S.L. 1997-406, H.B. 1110). As evidenced by its actions, whether it be the review of a candidate for licensure, granting licensure by comity, or evaluating continuing education courses for approval, the Board is guided in all decisions by the standard: "Does this protect the public health, safety and welfare?" The Council of Landscape Architectural Licensing Boards (CLARB), the national and international organization responsible for establishment, formation and administration of the professional examination, has written extensively on this topic. There is pertinent information on the licensure of this profession in a scholarly publication, Regulation of Landscape Architecture and the Protection of Public Health, Safety, and Welfare by Alex P. Schatz, J.D. We will be glad to provide copies of these documents in support of our view.

The two other measures were "complaints" and "disciplinary actions." It is a fallacy to measure the effectiveness of an agency that regulates a person's professional qualifications by the number of disciplinary actions it takes or the number of complaints filed against its licensees. As stated in the report, "an effective licensing process can help reduce the number of complaints by verifying professional competency." As described above, because of the high standards that a person must meet to be licensed, complaints from "consumers" of a licensed landscape architect's services are almost unheard of. The lack of complaints should not be a measure of failure. Instead, it should be a measure of success. The Board is fulfilling its legislative mandate by protecting the public from unqualified persons.

Regarding disciplinary actions, discipline of a licensee through suspension or revocation is almost never warranted. The Board's grounds for discipline are almost exclusively limited to gross malpractice or incompetence and crimes indicating an unfitness to practice. (See, N.C.G.S. §89A-7.) By their very nature, landscape architects are detail-oriented rule followers. Rarely, if ever, therefore, does the Board have to discipline a

licensee. It does, however, frequently take action—usually by a mere letter, and not its statutory injunctive powers—to notify individuals or business entities that their conduct may require licensure. In fact, during the pendency of the PED’s survey, the Board was investigating a licensee who had failed to renew approximately eight (8) years ago but continued to practice and seal plans. When his actions were brought to the attention of the Board, the Board carefully reviewed the case and after determining there had been no harm to the public health, safety and welfare by his actions, allowed the (former) licensee to bring himself into compliance through retaking the written exam, verifying his continuing education during the period of the lapse and paying a fine. This was a very appropriate resolution. Had there been actual harm to the public, the Board would have taken disciplinary action by way of revocation.

The fourth measure for which the Board received 10 points, “other states,” appropriately acknowledges the determinations made by other state legislators of the need for a licensure requirement to protect the public from harm. It is important to note that all 50 states, three Canadian provinces, and the territory of Puerto Rico license their landscape architects. Additionally, landscape architects must be licensed to be eligible for US Department of Defense and other federal contracts. Also of note is the fact that between 20 and 26% of the students in North Carolina State University’s landscape architecture degree program are foreign exchange students from China. As that country is rapidly expanding its infrastructure, it has quickly realized that landscape architects are needed to help protect the public health, safety and welfare.

We believe the above supplemental information should be sufficient to increase one or more of the scores. Furthermore, with an adjustment to the scores, which would increase the total score to a number greater than 10, we respectfully request the removal the Board of Landscape Architects from the list of OLAs subject to further review.

CONCERN #2: EVALUATION WITH RESPECT TO GENERAL STATUTES

The second major concern is the methodology employed to arrive at Recommendation 5. It is our view that judging a “professional” licensing board (as opposed to an “occupational” or “trades” board) requires a different evaluation methodology to determine the Board’s effectiveness. With the methodology used, the PED is holding this Board to a standard not prescribed in our statute. The Board’s function is to ensure the public health, safety and welfare by licensing those persons who possess the requisite education and experience. A reading of the Board’s enabling statutes found in Chapter 89A of the General Statutes clearly reflects this as the legislature’s mandate. Very little of the Board’s law and administrative rules are devoted to discipline; they are devoted to describing the minimum qualifications for licensure, and then the continuing education requirements to maintain licensure.

Consistent with the statutes, the Board of Landscape Architects’ purpose—and actions—ensure that only qualified and experienced persons, who then receive relevant continuing education, engage in the profession. The purpose of the Board is not to discipline licensees. Therefore, evaluation of a “professional” licensing board cannot be based

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solely on its disciplinary actions and complaints. Unlike the boards that license or certify occupations or trades, this Board is not a whip holder enforcing law and rules.

Since its establishment 45 years ago, the North Carolina Board of Landscape Architects has taken its role very seriously. The Board feels strongly that, as a result of the rigorous requirements of education, experience and examination, its licensees are more than adequately prepared to perform their job responsibilities in a professional, quality manner, adhering to the high standards required to obtain a license to practice or offer to practice landscape architecture in North Carolina. The standards in the State of North Carolina are among the most rigorous in the country. Over the past ten years, other states have looked to North Carolina to boost their own standards and requirements, and they have commended North Carolina as a leader in setting the standards to regulate the practice of landscape architecture. We believe our strong record of effectively protecting public health, safety and welfare is additional proof that the licensing authority of the Board should be maintained.

Thank you for allowing us to express our concerns. We are looking forward to the change in our status.

Sincerely,



Margaret Nealon, RLA, AICP
Chair, North Carolina Board of Landscape Architects

cc: Senator Fletcher Hartsell
Representative Julia Howard
Members of the NC Board of Landscape Architects
Jeffrey Gray, Bailey & Dixon, LLP
Barbara Geiger, Upton Associates