

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV State Board of Landscape Architects TITLE NUMBER: 9

RULE TYPE: Legislative CITE AUTHORITY: WV Code 30-22-1

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules of the West Virginia Board
of Landscape Architects

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2003 AT 3:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV State Board of Landscape Architects

1107 Ninth Street

Vienna, WV 26105

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

Dan R. Karsch
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#4.60



STATE BOARD of LANDSCAPE ARCHITECTS

1107 Ninth Street, Vienna, WV 26105 (304) 295-9304

WV State Board of Landscape Architects

Brief Summary of Proposed Changes to Rules and Regulations:

- | | |
|-------------------------------------|---|
| Section 3.5 - | Changes from 14 days to 7 days the advance notice time of board meetings. |
| Section 4.8 - | Changes the Uniform National Exam reference to the Landscape Architect Registration Exam. |
| Section 4.19 thru
Section 4.23 - | Adds the state mandated requirement of continuing education to our rules and regulations. |
| Section 5.1 - | Changes the annual renewal fee to \$50. |
| Section 9.1 - | Changes the Uniform National Exam reference to the Landscape Architect Registration Exam. |

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(614) 433-9513

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EDG, Inc.

002/003

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 9Type of Rule: X Legislative Interpretive ProceduralAgency: Board of Landscape ArchitectsAddress: 1197 Ninth StreetVienna, WV 26105

1. Effect of Proposed rule: 9-1-4.19 thru 9-1-4.23 (Continuing Education)
9-1-5.1 (Renewal Fee Adjustment)

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$200		none	\$200	\$200
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates: Continuing Education-May cost the board \$200 if we meet an additional time to review those audited.
- The renewal fee adjustment is to reflect the limit that our law currently allows us to charge. We will not see an increase in fees collected since we have been charging this amount for quite some time.
3. Objectives of These Rules:
- The Continuing Education requirement is mandated by Legislative Rule and this will make us current with that rule.

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003/003

Rule Title:

9

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
Landscape architects will have an investment in continuing education requirements. The amount will vary from individual to individual.

C. Economic Impact on Citizens/Public at Large. None

Date: July 1, 2003

Signature of Agency Head or Authorized Representative:

Paul R. Hunt



STATE BOARD of LANDSCAPE ARCHITECTS

1107 Ninth Street, Vienna, WV 26105 (304) 295-9304

June 30, 2003

Ms. Judy Cooper
Administrative Law Director
Secretary of State's Office
Building 1, Suite 157-K
Charleston, WV 25305-0770

Dear Ms. Cooper:

Please find enclosed our documentation for rule changes to be considered during the 2004 Legislative session. A copy is provided for the Secretary of State, the Legislative Rule Making Review Committee and one to be returned to us with your markings.

Please feel free to contact me at 304-295-9304 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "David R. Kaiser".

David R. Kaiser, Chairman
WV State Board of Landscape Architects

DRK:ssg

RECEIVED

JUL 01 2003

JOE MANCHIN III
WV SECRETARY OF STATE

**TITLE 9
LEGISLATIVE RULE
BOARD OF LANDSCAPE ARCHITECTS**

**SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF LANDSCAPE ARCHITECTS**

§9-1-1. General.

- 1.1. Scope. -- This legislative rule governs the administration of the Board, application, conduct and examination for licensure as a landscape architect.
- 1.2. Authority. -- W. Va. Code §§30-22-1 et seq.; 29A-5-1 et seq.; and 6-9A-3.
- 1.3. Filing date. -- ~~December 27, 1982.~~
- 1.4. Effective date. -- ~~December 27, 1982.~~

§9-1-2. Duties Of The Board.

- 2.1. The Board will elect a Treasurer from its membership who will keep accurate and complete records of all transactions of the Board.
- 2.2. The Secretary of the Board shall forward a copy of the Rules and Regulations and a copy of the Act along with all applications to the applicant.

§9-1-3. Administration.

- 3.1. A renewal notice shall be sent to all licensee holders not later than the last business day of April of each year. The application for renewal shall be due on or before June 30 of each year.
- 3.2. Renewal after June 30 ~~June 29~~ shall require the late renewal fee as stipulated in the Law.
- 3.3. Before issuing any license or renewal, the Board shall collect, from the person licensed, the full amount of all fees due for the preceding years.
- 3.4. The Board shall retain membership in the Council of Landscape Architectural Registration Boards (CLARB) and at least one (1) member of the Board shall attend meetings of CLARB when approved, as required by the state procedures. Expenses at such meeting shall be borne by the Board.
- 3.5. Regular meetings of the West Virginia State Board of Landscape Architects shall be held once a year at a time and place to be determined by the Board and notice of these regular meetings shall be given to the Secretary of State at least seven (7) ~~fourteen (14)~~ days in advance to be made available to the public and news media.

Notice must appear in the WV State Journal at least five (5) calendar days before the meeting.

3.6. Notice of time, place and purpose of all special meetings of the Board shall also be given to the Secretary of State at least **seven (7)** ~~fourteen (14)~~ days in advance or as soon as practicable, to be made available to the public and news media.

3.7. Notice of all regular and special meetings will be provided directly to the Secretary of other organizations upon written request from the Secretary of such organizations.

3.8. As provided by statute, the notice provisions of this rule are not required in the event of an emergency requiring immediate official action.

3.9. This rule is adopted in accordance with West Virginia Code section three, article nine-a, chapter six.

§9-1-4. Applications.

4.1. Applications for registration as a landscape architect will be received at any time during regular business hours at the office of the Board. But applications for written examination shall be filed with the prescribed examination fee in such office at least ten (10) weeks prior to the opening date of the examination.

4.2. All fees payable by applicants shall accompany the applications. Where the CLARB certification file is transferred to the Board for reciprocity, such forms may be used, in part or in whole, in substitution for the normal forms used by the Board.

4.3. The Board reserves the right to request additional information and/or documentary evidence of qualifications. Personal appearance before the Board may be requested and shall be at a time and place designated by the Board.

4.4. The Board reserves the right to retain any and all documents submitted as evidence of qualifications for registration. Photostatic copies of original documents may be submitted if notarized as true copies.

4.5. Failure to comply with a written request from the Board for additional evidence or information or to appear before the Board, when deemed necessary, within sixty (60) days of such notice, may be sufficient and just cause for the disapproval of the application.

4.6. All applicants must be endorsed by four (4) other persons not related by blood or marriage to the applicant. Two (2) of those endorsing must be landscape architects. No more than one (1) of these landscape architects may be from the applicant's place of employment. The two (2) nonlandscape architects may be general character references. Members of the Board may not serve as references or endorsers for applicants. Persons unable to obtain endorsements by two (2) landscape architects may meet with the Board at one (1) of its regular or special meetings to explain

the situation. Persons appearing under these conditions should bring or submit information and exhibits as may be requested by the Board.

4.7. The Board reserves the right to exercise the discretion provided in the Act by requiring the applicant to qualify by passing the regular written or oral or written and oral examination.

4.8. Those persons applying for registration under the reciprocity provisions per subdivision (2), subsection (b), section six, article twenty-two, chapter thirty of the Code of West Virginia, will be accepted only: (a) If they have been licensed by examination under the **national Landscape Architect Registration Exam (L.A.R.E.)** ~~Uniform National Examination~~ or (b) hold CLARB certification, and (c) if they demonstrate to the Board that they have adequate knowledge of the plant materials of the West Virginia region; and (d) if they submit satisfactory proof that they are registered in good standing in another state, based on (a) or (b) above. Applicants registered by other means in other states will not be accepted under reciprocity.

4.9. All applicants shall be considered individually by the Board and passed or rejected by a roll call vote. The action taken by the Board shall be recorded in the minutes. Approval of an applicant will require a majority vote of the Board.

4.10. All applications for registration under subsection (c), section six, article twenty-two, chapter thirty of the West Virginia Code, as amended, must be received by the Board no later than July 1, 1974.

4.11. An outline of the action taken by the Board shall be placed with each application.

4.12. The Board reserves the right to establish or change the classification under which the applicant is claiming eligibility.

4.13. Persons applying under the examination provisions of subdivisions (4) and (5), subsection (a), section six, article twenty-two, chapter thirty of the West Virginia Code may: (a) Use military experience to fulfill the required experience: **Provided**, That such military experience has been spent in the practice of landscape architecture as defined by the Act; or (b) when an applicant under subparagraph (i), subdivision (4), subsection (a), section six, article twenty-two, chapter thirty of the West Virginia Code, has not been able to work under the direct supervision of a landscape architect or any other person having qualifications acceptable to the Board and similar to the qualifications of a landscape architect, such applicant may take the examination after a period of five (5) years experience and personal appearance before the Board to present and document his/her qualifications to the satisfaction of the Board.

4.14. An applicant may take the examination within six (6) months of fulfilling the experience requirement but may not receive a license until after completion of this requirement.

4.15. Renewal will not be granted until a copy of each licensee's seal (rubber stamp and/or embossing) is submitted to and approved by the Board (see also Section 7 of these rules: Licensee's

Seal).

4.16. Applicants and those already licensed, who form a partnership or corporation with persons who are not landscape architects, shall notify the Board, in writing, of such fact at the time of application or within thirty (30) days of formation of such partnership or corporation. Such person shall notify the Board within thirty (30) days of dissolution of any such partnership or corporation.

4.17. Those persons not filing for renewal within four (4) months of the renewal date, shall be required to return their license (Certificate) to the Board until such time as they apply for renewal and have their license reinstated by the Board.

4.18. Unless otherwise provided by law, any appeal from the actions of the Board shall be filed with the Board within twenty (20) days from the date of receipt of the notice of such decision. Such correspondence shall be sent by certified or registered mail.

4.19 Notice of Continuing Education Requirements – Beginning with application renewal of license that expire on June 2004 and all subsequent expiration dates forward, each landscape architect shall have completed 12 PDH units of acceptable continuing education requirements during the period immediately preceding each renewal date as a condition of license renewal, or be exempt from these continuing education requirements as defined in 4.23.

4.20 Professional Development Hours (PDH) – Twelve PDH units (one unit = 50 minutes of actual instruction) will be required annually for license renewal. Eight of the 12 units must be in structured education activities which directly address health, safety, and welfare issues of the public as related to the practice of landscape architecture. All 12 PDH units may be acquired in these subjects and activities. Four units may be in related practice subjects.

Licensees will be able to apply up to five units of continuing education electronically, or through satellite courses.

4.21 Recordkeeping – If a licensee exceeds the annual requirement in any year, he or she may carry a maximum of eight (8) PDH units forward into the subsequent year.

Each landscape architect is responsible for his or her own professional development activities and is required to keep records of his or her continuing education units. These records shall be maintained for three renewal periods. The Board will conduct random audits to establish compliance with the continuing education requirements. The landscape architect need only submit his or her records if requested by the Board.

4.22 Unit Conversion Chart

Consult the following table to verify the conversion of other units of credit to WVBLA units:

<u>DEVELOPMENT ACTIVITY</u>	<u>WVBLA PDH Units</u>
<u>1 Post-graduate college or unit semester course (3 credit hours)</u>	<u>45</u>
<u>1 College or unit quarter course (3 credit hours)</u>	<u>30</u>
<u>1 IACET Continuing Education Unit</u>	<u>10</u>
<u>1 Hour in course work, seminars, professional conventions, workshops</u>	<u>1</u>
<u>1 hour of teaching in course work, seminars, professional conventions, workshops</u>	<u>2</u>
<u>Each published paper or article on landscape architecture subjects</u>	<u>5</u>
<u>Attending an ASLA Chapter meeting (Maximum of 4 points per year for attendance)</u>	<u>1</u>

4.23 **Exemptions – The landscape architect otherwise meets all renewal requirements and is a civilian called to active duty in the armed forces of the United States for a significant period of time, is ill or disabled for a significant period of time or can demonstrate to the Board another similar hardship.**

§9-1-5. Fees.

5.1. Renewal Fees. -- **Fifty dollars (\$50.00)** ~~Twenty-five dollars (\$25.00).~~

5.2. Late Renewal Fee. -- Fifteen dollars (\$15.00) in addition to the renewal fee. Specified in section seven, article twenty-two, chapter thirty of the Act.

5.3. Temporary Permit. -- Fifteen dollars (\$15.00). Specified in subsection (b), section eight, article twenty-two, chapter thirty of the Act.

5.4. Duplicate License. -- Ten dollars (\$10.00). Specified in section seven, article twenty-two, chapter thirty of the Act.

5.5. License Fee. -- Forty dollars (\$40.00). Specified in subsection (d), section six, article twenty-two, chapter thirty of the Act. (Also see Section 4.2 of these rules)

5.6. Reinstatement of a lapsed license due to nonrenewal for one (1) full year or more under subdivision (1), subsection (b), section six, article twenty-two, chapter thirty of the West Virginia Code, shall require, in addition to the normal renewal fee, one (1) previous year's renewal fee plus a late renewal fee. (See also Section 4.17 of these rules)

5.7. No fee is refundable except for the License Fee as prescribed in subsection (d), section six, article twenty-two, chapter thirty of the Act.

5.8. Examination Fees. -- All examination fees payable by applicants shall be due and payable upon determination of their eligibility and notification, by the Board, of the fee necessary. (Also see Section 9.6 of these rules)

§9-1-6. Professional Ethics.

6.1. The landscape architect shall conduct his/her practice in order to protect the public health, safety and welfare of the public in the performance of his/her professional duties. If his/her landscape architectural judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he/she shall inform his/her employer, in writing, of the possible consequences and notify such other proper authority of the situation, as may be appropriate.

6.2. The landscape architect shall perform his/her services only in the areas of his competence.

(a) The landscape architect shall undertake to perform landscape architectural assignments only when qualified by education or experience in the specific technical field of professional landscape architecture involved.

(b) The landscape architect may accept an assignment requiring education or experience outside his/her own field of competence, but only to the extent that his/her services are restricted to those phases of the project in which he/she is qualified. All other phases of such project shall be performed by qualified associates, consultants or employees.

(c) The landscape architect shall not affix his/her signature and/or seal to any landscape architectural plan or document dealing with subject matter to which he/she lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his/her direct supervisory control.

(d) In the event a question arises as to the competence of a landscape architect to perform a landscape architectural assignment in specific technical field of landscape architecture which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the landscape architect or by its own volition, may require him/her to submit to an appropriate examination as determined by the Board.

6.3. The landscape architect shall issue public statements only in an objective and truthful manner.

(a) The landscape architect shall be completely objective and truthful in all professional reports, statements or testimony. He/she shall include all relevant and pertinent information in such reports, statements or testimony.

(b) The landscape architect, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is found upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter and upon honest conviction of the accuracy and propriety of his/her testimony.

(c) The landscape architect will issue no statements, criticisms or arguments on landscape architectural matters connected with public policy which are inspired or paid for by an interested party, or parties, unless he/she has prefaced his/her comment by explicitly identifying

himself/herself, by disclosing the identities of the party or parties on whose behalf he/she is speaking and by revealing the existence of any pecuniary interest he/she may have in the instant matters.

6.4. The landscape architect shall avoid conflict of interest.

(a) The landscape architect shall conscientiously avoid conflicts of interest with his/her employer or client, but when unavoidable, the landscape architect shall forthwith disclose the circumstances to his/her employer or client.

(b) The landscape architect shall avoid all known conflicts of interest with his/her employer or client and shall promptly inform his/her employer or client of any business association interests or circumstances which could influence his/her judgment or the quality of his/her services.

(c) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(d) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(e) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents or other parties dealing with his/her client or employer in connection with work for which he/she is responsible.

(f) When in public service as a member, advisor or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by him/her or his/her organization in private landscape architectural practices.

(g) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his/her organization serves as a member.

6.5. The landscape architect shall solicit or accept work only on the basis of his/her qualifications.

(a) The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) The landscape architect shall not falsify or permit misrepresentation of his/her, or his/her associates' academic or professional qualifications. He/she shall not misrepresent or exaggerate his/her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications and his/her work.

6.6. The landscape architect shall associate only with reputable persons or organizations.

(a) The landscape architect shall not knowingly associate with or permit the use of his/her name or firm in a business venture by any person or firm which he/she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.

(b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the West Virginia Landscape Architects Law (article twenty-two, chapter thirty of the West Virginia Code), he/she shall present such information to the Board, in writing, and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board.

6.7. Conviction of a felony without restoration of civil rights, or the revocation or suspension of a professional landscape architect's license by another jurisdiction, if for a cause which the State of West Virginia would constitute a violation of the West Virginia Code (article twenty-two, chapter thirty) or of these rules, shall be grounds for a charge of violation of these rules.

6.8. Anti-trust laws take into account the need for quality standards and professionalism: **Provided,** That there is no unreasonable restraint of trade.

6.9. Whenever two (2) professionals (unless they are part of the same partnership or corporation) get together and agree on prices they will charge, where they will do business or with whom they will do business, they are functioning to restrain trade and, therefore, are in violation of the Law. Inasmuch as agreements on a minimum fee, group refusals to deal with any person(s) or group and agreements not to bid a price, have been determined illegal, therefore, competitive bidding is determined to be permissible by the Board.

§9-1-7. Licensee's Seal.

7.1. Each licensee shall obtain a rubber stamp or embosser seal following the wording and format shown here: **Provided,** That minor modifications as to size and marginal lines may be approved by the Board as long as the seal is easily legible.

7.2. An impression of any seal (rubber stamp or embossing) must be filed with and approved by the Board before it may be used.

7.3. An impression of the seal shall be affixed over and on top of the licensee's signature on all documents prepared by him/her or under his/her immediate and responsible supervision for use in the State of West Virginia.

7.4. The use of one's seal on any plans, drawings, specifications, reports or other instruments of service which were not prepared by him/her or under his/her immediate and responsible supervision, or permitting one's name to be used for the purpose of assisting any person to evade the provisions of the Code, article twenty-two, chapter thirty, shall subject such person to suspension or revocation of license or temporary permit.

§9-1-8. Hearings.

8.1. Hearings shall be granted by the Board in accordance with the Code of West Virginia, article five, chapter twenty-nine-a, and section twelve, article twenty-two, chapter thirty, as amended, upon written request and receipt of security for the costs of such hearing: **Provided, That:**

(a) Such written request shall state the matters to be decided by such hearing, shall state whether the person requesting the hearing will represent himself/herself or will be represented by an attorney-at-law, and shall identify such attorney;

(b) The security for the costs of such hearing shall be in the form of a Bond or Cashiers Check made out to the West Virginia State Board of Landscape Architects in the amount of five thousand dollars (\$5,000);

(c) If such person does not substantially prevail at such hearing, the security for the costs of such hearing shall be forfeited;

(d) The date, place and time of such hearing shall be established by the Board in accordance with the Code;

(e) All expenses of such hearing shall be paid by the person requesting the hearing, including the expense of recording, transcribing and publishing of the proceedings of such hearing as provided in the Code as well as the expenses of the Board.

§9-1-9. Examinations.

9.1. An applicant qualifying under subsection (a), section six, article twenty-two, chapter thirty of the West Virginia Code, shall submit to and pass the **national Landscape Architect Registration Exam (L.A.R.E.)** ~~Uniform National Examination~~ plus a plant materials examination.

9.2. The examination will be given at the dates, time and place determined by the Board. The

examination shall be conducted in accordance with the instructions issued by the Board and a copy of the instructions shall be furnished to each applicant.

9.3. The minimum passing grade for the examination shall be established for each section of the examination. All sections must be passed before the person is eligible for licensure.

9.4. Applicants who fail may retake those portions of the examination not passed at the next regularly scheduled examination period. Those portions failed must be retaken within a two (2) year period. If not retaken during this two (2) year period, the Board shall require such person to retake the entire examination unless they can show extenuating circumstances satisfactory to the Board.

9.5. Applicants must complete, successfully, all sections of the examination within a five (5) year period. Applicants not so doing shall be required to retake the entire examination.

9.6. Cost of the examination or reexamination shall be borne by the applicant over and above the license fee for registration. A new fee shall be required for each additional examination or portion thereof. The fee shall be forfeited in the event that the applicant fails to take the examination unless extenuating circumstances prevent the applicant from attending the examination and the Board is notified in advance.

9.7. The applicant shall be notified of the examination cost when notified of the dates, time and place of the examination.

9.8. The examination fee will be based on the sections of the examination to be taken or retaken.

9.9. The Board shall notify the examinee of the examination grade on a pass/fail basis only. All examination documents shall be retained by the Board. The examinee may inspect the graded examination in the presence of a Board member.