



GOVERNOR GREG ABBOTT

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From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: June 16, 2021

Subject: Title 22 Texas Administrative Code Sections 3.21, 3.22, and 3.191 (RCD Rule Review #2021-007)

I. Syllabus

The Texas Board of Architectural Examiners (“board”) filed an intent to review 22 TAC Chapter 3 pursuant to Section 2001.039, Texas Government Code.¹ The board submitted 22 TAC §§3.21, 3.22, and 3.191, which set forth the requirements for landscape architectural registration by examination and reciprocity, and experience requirements for registration by examination, to the Regulatory Compliance Division (“division”) for review on March 26, 2021.² The division invited public comments on the rules for a 30-day period ending April 28, 2021, but received no comments. The division has determined that §§3.21 and 3.22 are consistent with state policy and may be readopted. However, several provisions in §3.191 are inconsistent with state policy, so that rule may not be readopted without amendment.

II. Analysis

Sections 1052.153 and 1052.154, Texas Occupations Code, create a three-pronged approach to registration as a landscape architect by requiring applicants to meet education, experience, and examination prerequisites, which are detailed in §§3.21 and 3.191.³ Additionally, Section 1051.305, Texas Occupations Code, as reflected in §3.22, allows the board to waive prerequisites for applicants who hold credentials from another jurisdiction with substantially equivalent requirements or with which Texas has a reciprocity agreement. Because registration prerequisites

¹ 46 Tex. Reg. 2049 (2021) (notice of intent to review 22 TAC chs. 1, 3, 5, and 7) (published Mar. 26, 2021) (Tex. Bd. Architectural Exam’rs.).

² Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 1, 6, and 10 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ *Id.* at 2-3.

and limitations on reciprocal credentialing may create barriers to entering the market, the rules affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.⁴

A. The education prerequisite in 22 TAC §3.21(a)(1) is consistent with state policy.

Section 1052.154(a)(1) requires applicants to graduate from a landscape architecture educational program recognized and approved by the board. Section 3.21(a)(1)(A) requires landscape architectural education programs to be accredited by the Landscape Architectural Accreditation Board (“LAAB”). By using a national accrediting body, the board is able to judge programs based on consistent standards, while applicants remain free to choose between programs of varying costs, locations, and reputations without impacting their eligibility for registration in Texas.⁵ Subparagraphs (B) and (C) provide additional flexibility for applicants who attend programs pending accreditation, which expands academic opportunities for students, as well as encourages new programs, while ultimately still holding applicants to the same education standards.⁶

Further, §3.21(a)(1)(D) creates a pathway to registration for graduates of programs outside of the United States that are found to be substantially equivalent to a baccalaureate, master’s, or doctoral degree in landscape architecture in the United States. The board relies on a credential evaluation organization, which, while unable to certify a program’s substantial equivalency with *LAAB-accreditation*, can determine the program’s substantial equivalency to an American *degree*.⁷ Because these organizations have access to significant resources and expertise, such services are a common tool for occupational licensing agencies to facilitate consistent, reliable appraisals of foreign education. Accreditation and credential evaluation services allow the board to efficiently approve applicants’ landscape architectural education programs as required by Section 1052.154(a)(1), and, thus, §3.21(a)(1) is consistent with state policy.

B. The experience prerequisite in 22 TAC §3.21(a)(2) is supported by statute, but several provisions in 22 TAC §3.191 are inconsistent with state policy.

Section 1052.154(a)(2) requires applicants to obtain satisfactory experience in landscape architecture as determined by the board. Section 3.21(a)(2) explains that experience must be obtained while working directly under a licensed landscape architect or through other experience in the Texas Table of Equivalents for Experience in Landscape Architecture

⁴ *Id.* at 4-5, 8-9, and 13-14.

⁵ *See id.* at 3; *see also* American Society of Landscape Architects, *Accredited or Candidacy Programs*, <https://www.asla.org/FullListofAccreditedPrograms.aspx> (last visited May 24, 2021).

⁶ *See* 33 Tex. Reg. 2771 (2008) (preamble to proposed amended 22 TAC §3.21) (proposed Apr. 4, 2008) (Tex. Bd. Architectural Exam’rs.).

⁷ Agency Response to Request for Additional Information (Apr. 16, 2021), at 4 and Appendix 2, pg. 5 (on file with the Regulatory Compliance Division of the Office of the Governor); Clarification to Agency Response to Request for Additional Information (Apr. 23, 2021) (on file with the Regulatory Compliance Division of the Office of the Governor).

(“Table of Equivalents”). The Table of Equivalents provides multiple ways for an applicant to be credited for relevant experience, even including work unsupervised by a professional, based on the board’s appraisal of the experience’s worth and relevance to registration.⁸ The board is given broad authority to determine what experience is acceptable for registration purposes, and, thus, the general requirement to obtain experience in §3.21(a)(2) and the Table of Equivalents in §3.191(c) are consistent with state policy.

In §3.191(a), the board requires an applicant who graduates from a LAAB-accredited program to obtain two years of experience, including at least one year of work under the direct supervision of a registered landscape architect pursuant to §3.191(d). Comparing the experience required for registered architects and interior designers, and a national certification available to landscape architects, the board determined that two years’ experience was an appropriate minimum level to “learn about the daily realities of landscape architectural practice, acquire applied experience in basic practice areas, and develop professional judgment.”⁹ Thus, §3.191(a), requiring two years’ experience, and §3.191(d), requiring at least one year to be obtained under direct supervision of a registered landscape architect, are consistent with state policy.

In contrast, §3.191(b) requires an applicant who graduates from a substantially equivalent program outside of the United States to obtain three years of experience. In 2016, the board was informed that its preferred credential evaluation organization was unable to certify equivalency with LAAB-accredited programs and could only assess equivalency with American degrees; the board then amended the rule to add a year of experience under the premise that it was necessary to “supplement the loss of certified equivalence with LAAB standards.”¹⁰ Nevertheless, after it learned of the organization’s limitations, the evaluation required by the board remained the same, and board rules continued to recognize that foreign programs could be substantially equivalent to American degrees.¹¹ As such, there was no clear “loss” — the credential evaluation organization certified the same information after 2016 as it had before — the board simply increased its experience requirements for applicants educated abroad. Absent a showing that accredited programs have an experiential component not found in foreign programs, or some similar

⁸ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 3-4.

⁹ *Id.* at 2-3 and 11-12.

¹⁰ Agency Response to Request for Additional Information (Apr. 16, 2021), at 4. The board believes the credential evaluation organization cannot account for administrative aspects of a foreign education program, such as program and institution management and policies. Clarification to Agency Response to Request for Additional Information (Apr. 23, 2021).

¹¹ Clarification to Agency Response to Request for Additional Information (Apr. 23, 2021). Between at least 2002 and 2016, the board only required two years’ experience regardless of the location of where applicants received their education if it was substantially equivalent. *See* 22 TAC §3.191 (22 Tex. Reg. 2233) (2002) (adopted to be effective Mar. 25, 2002) (Tex. Bd. Architectural Exam’rs.) *and* 22 TAC §3.21 (26 Tex. Reg. 7844) (2001) (amended to be effective Oct. 10, 2001) (Tex. Bd. Architectural Exam’rs.).

substantive difference, requiring additional experience for only some applicants is not supported by statute and, thus, §3.191(b) is inconsistent with state policy.

The board also creates limitations on crediting relevant experience in §3.191. While the board has authority to determine the type and quality of experience that is satisfactory for registration pursuant to Section 1052.154(a)(2), §3.191(e) sets minimum requirements for full-time and part-time employment and employment duration that are inconsistent with the board's approach for another related profession under its jurisdiction. The board has not limited *architectural* applicants to minimum employment timeframes since at least 2014, after finding applicants could not receive credit for short-term projects, internships, or work conducted over winter and spring breaks that were relevant to future licensed practice.¹² The board attributes this difference to the need to ensure that the experience obtained by landscape architectural applicants is relevant to competency in landscape architecture, absent a similar national experience program such as is provided for architectural applicants.¹³ However, the board's premise for the limitations in §3.191(e) — that longer employment will lead to deeper incorporation into a greater breadth of tasks — is not guaranteed, as even a long-term employee could be given only a few responsibilities or be exposed to only a narrow field within landscape architecture.¹⁴ Moreover, these limitations may discourage aspiring landscape architects from seeking opportunities that provide more diverse or meaningful experience but are of a shorter duration because credit is not available. Ultimately, the limitations in §3.191(e) do not serve the statutory directive that applicants complete satisfactory experience and, thus, that subsection is inconsistent with state policy.

Similarly, no policy supports the position in §3.191(g) that landscape architectural applicants should not receive credit for experience obtained while pursuing a degree, or even before, where it is permitted for architectural applicants. The division recognizes that the professions of architecture and landscape architecture are at different stages nationally and, thus, the board has access to different resources and information when considering the appropriateness of regulations. However, the board relies on substantially the same authority to set experience standards for the two closely-related professions, so any inconsistencies between requirements should be reasonably justified by and consistent with evidence.¹⁵ While the board posits that graduates may have access to

¹² Agency Response to Request for Additional Information (Apr. 16, 2021), at Appendix 1, pg. 48-53 (leading to the repeal of those requirements in 22 TAC §1.192 in 39 Tex. Reg. 4250 (2014)).

¹³ Agency Response to Second Request for Additional Information (May 26, 2021), at 1-2 (on file with the Regulatory Compliance Division of the Office of the Governor).

¹⁴ *Id.* at 2. The board also does not require applicants to report on types of experience, and applicants' depth of knowledge is still subject to examination for minimum competency. Texas Board of Architectural Examiners, *Landscape Architect Registration Employment Verification Form*, <https://www.tbae.texas.gov/Content/documents/HowToApply/forms/EmploymentVerificationLandscape.pdf>.

¹⁵ Sections 1051.705(a)(2) and 1052.154(a)(2), Texas Occupations Code; *and see* Regulatory Compliance Division Determination Letter for Proposed Title 22 Texas Administrative Code Sections 1.21 and 1.22 (RCD Rule Review #2021-005) (June 16, 2021) (on file with the Regulatory Compliance Division of the Office of the Governor).

more meaningful experience than current students, there is no evidence that the opportunities to earn experience for landscape architectural students are measurably inferior to those available for architectural students.¹⁶ Thus, the restriction in §3.191(g) is not supportable by state policy.

In contrast to the above, requiring courses to be relevant to landscape architecture in §3.191(f), and clarifying how semester or quarter hours equate to a year, are reasonable conditions to place on crediting academic experience and, thus, that subsection is consistent with state policy.

C. Requiring applicants to pass the national Landscape Architect Registration Examination, as incorporated into 22 TAC §3.21(a)(3), is consistent with state policy.

Section 1052.153 requires applicants to pass an examination prescribed by the board. Section 3.21(a)(3) incorporates by reference 22 TAC Chapter 3, Subchapter C, which requires applicants to successfully complete all sections of the Landscape Architect Registration Examination (“LARE”), as administered by the Council of Landscape Architectural Registration Boards (“CLARB”).¹⁷ Section 1052.153(b) specifically authorizes the board to adopt the examination administered by CLARB, and Sections 1051.302 and 1051.304(b) recognize that the board may rely on a third party to administer and score its examinations. Thus, the requirement to take the LARE, as incorporated into §3.21(a)(3), is consistent with state policy.

D. The transition provisions in 22 TAC §3.21(b) and (c) are no longer needed, but requiring applicants to submit proof of legal status in 22 TAC §3.21(d) is consistent with state policy.

In §3.21(b) and (c), the board provided for the application of older rules to applicants who commenced their education or experience prior to September 1, 1999, and applied for registration by examination on or before August 31, 2011. Both subsections likely prevented the interruption of education or experience being accrued during a change in registration requirements, but they have been expired for a decade. As neither statute nor circumstances currently require similar language, these subsections may be removed from the rule without affecting competition to improve clarity for applicants.

Additionally, §3.21(d) requires applicants to submit proof of legal status in the United States in the form of a birth certificate or other documentation, pursuant to federal law and as implemented in Section 231.302(c)(1), Texas Family Code.¹⁸ Thus, that provision is consistent with state policy.

¹⁶ Agency Response to Second Request for Additional Information (May 26, 2021), at 2.

¹⁷ 22 TAC §3.41 et seq.

¹⁸ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2268 (1996), at Sections 317 and 411 (establishing 42 U.S.C. §666(a)(13) and 8 U.S.C. §1621, respectively).

E. The criteria for registration by reciprocity in 22 TAC §3.22 are consistent with state policy.

Finally, as stated above, Section 1051.305 clearly authorizes the board to waive any prerequisite to obtaining a certificate of registration for an applicant who holds a license or certificate of registration issued by another jurisdiction that has substantially equivalent registration requirements or with which Texas has a reciprocity agreement. Section 3.22(a) restates that authority, and Subsection (b) outlines the criteria an applicant must meet to obtain a reciprocal registration, including the successful completion of the LARE or a comparable exam, and at least two years of acceptable experience following registration in another jurisdiction. The board broadly interprets “acceptable landscape architectural practice” in §3.22(b)(1)(B) as the time during which the applicant was engaged in the practice of landscape architecture while registered in another jurisdiction, which captures professional experience without limitation.¹⁹ Alternatively, applicants may qualify for reciprocity through CLARB certification, which requires three years’ experience in addition to passage of the LARE, which exceeds the board’s standards required for registration by examination for domestically-educated applicants.²⁰ Although applicants for architectural registration by reciprocity may qualify by virtue of experience gained prior to their original registration, the national program through which that experience is verified is not available in the landscape architecture industry, which also does not have comparably standardized experience requirements across jurisdictions.²¹ Thus, the board’s assertion that two years’ experience post-registration “helps to ensure that any deficiency in pre-licensure experience has not manifested in unsafe practice following registration” is a reasonable condition on reciprocal registrants.²² Finally, §3.22(c) requires the payment of the registration fee, consistent with Section 1051.305(c)(1). Thus, §3.22 is consistent with state policy.

III. Determination

Based on the above analysis, 22 TAC §§3.21 and 3.22 are approved by the division and may be readopted pursuant to Section 2001.039, Texas Government Code. However, the division has determined that several provisions in §3.191 are not consistent with state policy. Consequently, that rule is disapproved by the division.

Consistent with the above analysis, the division offers the following precise instructions for revision:

¹⁹ Agency Response to Request for Additional Information (Apr. 16, 2021), at 3.

²⁰ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 4.

²¹ Agency Response to Second Request for Additional Information (May 26, 2021), at 3.

²² *Id.*

The board should revise the requirement in §3.191(b) that applicants who have a substantially equivalent degree obtained outside the United States must obtain extra experience. The board may consider what criteria foreign education programs must meet to be substantially equivalent to LAAB-accredited programs, but cannot treat applicants with substantially equivalent educations differently.

The board should also remove the conditions in §3.191(e) and (g) that prevent applicants from obtaining credit for relevant experience gained for short-term projects and experience obtained while applicants pursue higher education.

The board may readopt §3.191 without resubmission to the division if it adheres to the precise instructions for revision and makes no additional substantive changes to the rule. Alternatively, the board may take a different approach to address the inconsistencies identified by the division, but must resubmit the rule for approval by the division prior to readoption.