

Rules Committee Members

Chad Davis, Chair
Charles "Chuck" Anastos
Sonya Odell
Davey Edwards

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Rules Committee Meeting Agenda

William P. Hobby State Office Building
333 Guadalupe Street
Tower III, Conference Room 102
Austin, Texas

Monday, August 24, 2015

1:30 P.M. to conclusion

1. Call to Order
2. Roll Call
3. Public Comment
4. Approval of minutes of the July 25, 2014 meeting of the Rules Committee (*Action*)
5. Registration of military service member, military veterans and expedited reciprocal registration of military spouses (*Action*)
6. Discuss possible changes to Rule 5.202 – NCIDQ Interior Design Experience Program (*Action*)
7. Review Rule 1.52, relating to the Architectural Registration Examination Financial Assistance Fund and possibly amend Rule 7.10 to assess a fee upon architectural registration and renewal of architectural registration to provide funding for financial assistance to qualified applicants to cover the cost of the examination (*Action*)
8. Amendments to Rule 7.7 requiring request for rulemaking to be filed by Texas resident (HB 763) (*Action*)
9. New Rule regarding tuition reimbursement (HB 3337) (*Action*)
10. Disciplinary issues relating to unauthorized use of architectural seals (*Action*)
11. How to evaluate foreign landscape architect degrees (*Action*)
12. Discussion:
 - A. Continuing Education Rule and Violations
 - B. The sanction of business entities
 - C. Statutory limitations of fines in Chapter 1051, Section 1.177, Administrative Penalty Schedule
13. Adjourn

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Minutes of the Rules Committee Meeting

July 25, 2014

The William P. Hobby, Jr. Building
333 Guadalupe Street, Tower II, Ste. 350L
Austin, TX 78701

1. Call to Order

The Chair called the meeting of the Rules Committee to order at 9:00 a.m.

2. Roll Call

The Chair called the roll and declared a quorum of the Committee was present.

Present Board Members:

Chad Davis, Chair

Davey Edwards

Sonya Odell

Excused Absence:

Charles A. (Chuck) Anastos

TBAE Staff Present

Cathy L. Hendricks, Executive Director

Scott Gibson, General Counsel

Jack Stamps, Managing Investigator

Glenn Garry, Communications Manager

Mary Helmcamp, Registration Manager

Glenda Best, Director of Operations

Katherine Crain, Legal Assistant

3. Public Comment

None

4. Amend Rules 1.69, 3.69 and 5.79 relating to continuing education reporting requirements for the initial reporting period after registration or after reinstatement of registration

The General Counsel stated that this matter was brought to the Board's attention and referred to the Rules Committee. The rules deal with continuing education and the continuing education exemption in the first year of a jurisdiction. These rules would make continuing education more consistent among the states.

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO AMEND RULES 1.69, 3.69 AND 5.79 RELATING TO CONTINUING EDUCATION REPORTING REQUIREMENTS FOR THE INITIAL REPORTING PERIOD AFTER REGISTRATION OR AFTER REINSTATEMENT OF REGISTRATION. THE MOTION PASSED UNANIMOUSLY.

5. Registration of military service member, military veterans and expedited reciprocal registration of military spouses

The General Counsel explained that SB162 was passed during the last legislative session which provided special provisions for the spouses of veterans and the new proposed rules were modeled after the Optometry Board. There was discussion amongst the committee members regarding the details of the new proposed rules.

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO APPROVE THE RULES FOR STAFF TO RESEARCH THE WORDING ON THE RULES REGARDING THE NATIONAL GUARD. (Ms. Odell suggested that TBAE check with NCARB, CLARB and NCIDQ to come up with a solution on the matter.) THE MOTION PASSED UNANIMOUSLY.

6. Amend Rules 1.232, 3.232 and 5.242 relating to the penalty matrix for assessing sanctions for specified violations of law enforced by the Board

The General Counsel stated that he tried to describe the violation and the recommended penalties based upon past board meetings. The Chair suggested that there be one set of rules for all 3 professions for registrants and have another set for non-registrants. In addition, he requested staff provide a list of cases and imposed sanctions for enforcement from the past four (4) years to give them a guideline on present enforcement cases.

The Committee took a break at 10:13 a.m. and reconvened at 10:24 a.m.

7. Review and possibly revise Rules 1.147 and 3.147 relating to the implementation of the Professional Services Procurement Act as it applies to a governmental entity's procurement of architectural and landscape architectural services

The Committee discussed the revised rules and the Chair suggested that the Committee repeal Rule 3.147 altogether.

The Committee took a break for lunch at 12:00 p.m. and reconvened at 1:10 p.m.

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO REPEAL RULE 3.147. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO ACCEPT THE CHANGES TO RULE 1.147 AS OUTLINED ON PAGE 48. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Odell/Edwards) TO ACCEPT THE PENALTY MATRIX AS NOTED AND DISCUSSED WITH LEAVE TO MAKE TECHNICAL CORRECTIONS TO ALL THREE PROFESSIONS. THE MOTION PASSED UNANIMOUSLY.

8. Review Rules 1.144, 3.144 and 5.154 relating to dishonest practices and possibly define or describe the term “intent” for purposes of enforcing the rule

The General Counsel stated that the change comes from staff and the change would define “intent” and “knowing and knowledge.” Furthermore, he borrowed the proposed language from the conflict of interest rule. This rule establishes “intent.”

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO ACCEPT THE RULES AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

9. Review Rule 1.52, relating to the Architectural Registration Examination Financial Assistance Fund and possibly amend Rule 7.10 to assess a fee upon architectural registration and renewal of architectural registration to provide funding for financial assistance to qualified applicants to cover the cost of the examination.

The Committee briefly discussed the rule and determined that they would table this rule because the member architect was not available for the meeting and they wanted his input prior to voting on the rule.

10. Amend Rules 1.43, 3.43 and 5.53 to allow for extensions to the 5-year “rolling clock” deadline for passing registration examinations for architecture, landscape architecture and registered interior design.

The General Counsel informed the committee members that this rule was being amended because TBAE’s rule does not match NCARB’s rule.

A MOTION WAS MADE AND SECONDED (Odell/Edwards) TO ACCEPT THE RULES AS PROPOSED. THE MOTION PASSED UNANIMOUSLY.

11. Adjourn

A MOTION WAS MADE AND SECONDED (Edwards/Odell) TO ADJOURN THE RULES COMMITTEE MEETING AT 2:13 P.M. THE MOTION PASSED UNANIMOUSLY.

The Committee adjourned at 2:13 p.m.

APPROVED BY THE RULES COMMITTEE:

MICHAEL CHAD DAVIS
Chair

Agenda Item 5
Draft Rule Changes – Registration of Military Service Members, Military Veterans, and Military Spouses

Background

Recently, the legislature passed two bills amending Chapter 55 of the Texas Occupations Code. Chapter 55 deals with occupational licensing of military service members, veterans, and spouses. The two bills in question are SB 807 and SB 1307. The following changes to Chapter 55 have been made.

- SB 807: Waives license application and examination fees collected by the state for:
 - A military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or
 - a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.
- SB 1307
 - Modifies or adds definition of the terms “active duty,” “armed forces of the United States,” “military service member,” “military spouse” and “military veteran,” and alters usage of terms thereof.
 - Grants agencies authority to adopt rules to establish alternative methods for military service members, veterans, and spouses to demonstrate competency for licensure.
 - Extends expedited licensure provisions that previously applied only to military spouses to military service members and veterans as well.

For ease of review, a full copy of Texas Occupations Code Chapter 55, with underlining and strikethrough formatting indicating changes resulting from SB 807 and SB 1307 has been included as Attachment 5-B.

Draft Amendments

The draft amendments encompass the following rules:

- Rules 1.29, 3.29, and 5.39¹
 - Modifies Rule title from “Credit for Military Service” to “Registration of a Military Service Member, Military Veteran, or Military Spouse”
 - Modifies definitions of “active duty,” “armed forces of the United States,” “military service member,” “military spouse” and “military veteran” in accordance with SB 1307
 - Incorporates previously existing Chapter 55 provisions as follows:
 - Grants licensure eligibility to a military service member, veteran, or spouse if:

¹ Please note that the attached draft revisions are limited to Rules in Chapter 1. However, identical revisions for Chapter 3 (landscape architects) and Chapter 5 (registered interior designers) will be prepared if approved by the committee.

- the applicant holds an active registration issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or
 - the applicant held an active registration in this state within the five years preceding the application.
 - Provides for expedited consideration of applications filed by military service members, veterans, and spouses.
- Rules 1.22, 3.22, and 5.32
 - Deletes provision for expedited consideration of military spouse application for registration (provision has been moved to Rules 1.29, 3.29, and 5.39)
- Rules 1.69, 3.69, and 5.79
 - Incorporates previously existing Chapter 55 provision that allows military service member an additional two years to complete continuing education requirements.
- Rule 7.10
 - Includes waiver of application and examination fees paid to the state:
 - For a veteran if the veteran’s military service, training, or education substantially meets all requirements of a registration
 - For a military veteran or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for registration in this state
 - In practice, this would not include examination fees paid to national certifying organizations, as they are not “collected by the state”

Attached you will find the following supporting documents:

- Attachment 5-B: Texas Occupations Code Chapter 55, with underlining and strikethrough formatting indicating changes resulting from SB 807 and SB 1307.
- Attachment 5-C: Draft amendments to Rule 1.22
- Attachment 5-D: Draft amendments to Rule 1.29
- Attachment 5-E: Draft amendments to Rule 1.69
- Attachment 5-F: Draft amendments to Rule 7.10

OCCUPATIONS CODE

TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING

CHAPTER 55. ~~LICENSE FOR MILITARY SERVICE MEMBER OR MILITARY SPOUSE~~

LICENSING OF MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) ~~(1-a)~~ "Military service member" means a person who is on active duty ~~currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.~~

(5) ~~(1-b)~~ "Military spouse" means a person who is married to a military service member ~~who is currently on active duty.~~

(6) ~~(1-e)~~ "Military veteran" means a person who has served on active duty and who was discharged or released from active duty ~~in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.~~

~~(7)(2)~~ "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Sec. 55.002. EXEMPTION FROM PENALTY FOR FAILURE TO RENEW LICENSE. A state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member on active duty in the United States armed forces serving outside this state.

Sec. 55.003. EXTENSION OF LICENSE RENEWAL CERTAIN DEADLINES FOR ACTIVE DUTY MILITARY SERVICE MEMBERS PERSONNEL. A military service member ~~person~~ who holds a license, ~~is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority~~ is entitled to two years of an additional amount of time, ~~equal to the total number of years or parts of years that the person serves on active duty,~~ to complete:

- (1) any continuing education requirements; and
- (2) any other requirement related to the renewal of the military service member's ~~person's~~ license.

Sec. 55.004. ALTERNATIVE LICENSING LICENSE PROCEDURE FOR MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES ~~SPOUSE.~~ (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse ~~the spouse of a person serving on active duty as a member of the armed forces of the United States~~ and:

(1) holds a current license issued by another jurisdiction state that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date held the license in this state ~~that expired while the applicant lived in another state for at least six months.~~

~~(b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.~~

~~(c) The executive director of a state agency may waive any prerequisite to obtaining a license for an applicant described by Subsection (a) after reviewing the applicant's credentials issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).~~

(c) In addition to the rules adopted under Subsection (a), a state agency that issues a license may adopt rules that would establish alternate methods for a military service member, military veteran, or military spouse to demonstrate competency to meet the requirements for obtaining the license.

Sec. 55.005. EXPEDITED LICENSE PROCEDURE FOR MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES. (a) A state agency that issues a license shall, as soon as practicable after a military service member, military veteran, or military spouse files an application for a license:

(1) process the application; and

(2) issue the a license to an a ~~qualified military spouse~~ applicant who qualifies for the license under Section 55.004 holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state.

(b) A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

Sec. 55.006. RENEWAL OF EXPEDITED LICENSE ISSUED TO MILITARY SERVICE MEMBER, MILITARY VETERAN, OR MILITARY SPOUSE.

(a) As soon as practicable after a state agency issues a license under Section 55.005, the state agency shall determine the requirements for the license holder to renew the license.

(b) The state agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

(c) A license issued under Section 55.005 has the term established by law or state agency rule, or a term of 12 months from the date the license is issued, whichever term is longer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Sec. 55.007. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, a state agency that issues a license shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the state agency.

(b) The state agency shall adopt rules necessary to implement this section.

(c) Rules adopted under this section may not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) has an unacceptable criminal history according to the law applicable to the state agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Sec. 55.005~~8~~. APPRENTICESHIP REQUIREMENTS FOR APPLICANT WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, if an apprenticeship is required for a ~~an occupational~~ license issued by a state agency, the state agency shall credit verified military service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license. (b) The state agency shall adopt rules necessary to implement this section.

Sec. 55.009. LICENSE APPLICATION AND EXAMINATION FEES. Notwithstanding any other law, a state agency that issues a license shall waive the license application and examination fees paid to the state for an applicant who is:
(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or
(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

Sec. 55.009. NOTICE OF CHAPTER PROVISIONS. A state agency that issues a license shall prominently post a notice on the home page of the agency's Internet website describing the provisions of this chapter that are available to military service members, military veterans, and military spouses.

Rule §1.22 Registration by Reciprocal Transfer

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(B) successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

~~(c) Pursuant to §55.005, Texas Occupations Code, the Board shall expedite the processing of an application for architectural registration by reciprocal transfer, if the Applicant is a military spouse, and shall give priority to the applications of military spouses over other Applicants.~~

~~(d) An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.~~

Rule §1.29 Credit for Military Service Registration of a Military Service Member, Military Veteran, or Military Spouse

(a) Definitions.

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

~~(4)~~(3) "Military service member" means a person who is on active duty currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(4) "Military spouse" means a person who is married to a military service member.

~~(2)~~ (5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Registration eligibility requirements for military service members, military veterans, and military spouses applicants with military experience.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active registration issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(B) Held an active registration in this state within the five years preceding the application.

(3) As soon as practicable after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

~~(2)~~ (4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

Rule §1.69 Continuing Education Requirements

(a) Each Architect shall complete a minimum of 12 continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: surveying, structural, mechanical, electrical, communications, fire protection, controls.

(3) environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(4) occupant comfort: air quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products, finishes, furnishings, equipment.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: land use analysis, programming, site selection, site and soils analysis.

(8) design: urban planning, master planning, building design, site design, interiors, safety and security measures.

(9) Construction Documents: drawings, specifications, delivery methods.

(10) construction administration: contract, bidding, contract negotiations.

(b) Each Architect shall complete the minimum mandatory CEPH during the last full calendar year immediately preceding the date the Architect renews the Architect's certificate of registration. Of the 12 minimum mandatory CEPH, each Architect shall complete a minimum of one CEPH in barrier-free design and at least one CEPH in the study of Sustainable or Energy-Efficient design. One CEPH equals a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) Architects shall complete a minimum of eight CEPH in structured course study. No credit shall be awarded for the same structured course for which the Architect has claimed credit during the preceding three years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) Architects may complete a maximum of four CEPH in self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Architect has not previously utilized for self-directed study.

(e) The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses dealing with technical architectural subjects related to the Architect's profession, ethical business practices, or new technology;

(2) Teaching architectural courses and time spent in preparation for such teaching:

(A) a maximum of four CEPH may be claimed per class hour spent teaching architectural courses;

(B) an Architect may not claim credit for teaching the same course more than once; and

(C) College or university faculty may not claim credit for teaching.

(3) Hours spent in professional service to the general public which draws upon the Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) Hours spent in architectural research which is published or formally presented to the profession or public;

(5) Hours spent in architectural self-directed study programs such as those organized, sponsored, or approved by the American Institute of Architects, the National Council of Architectural Registration Boards, or similar organizations acceptable to the Board;

(6) College or university credit courses on architectural subjects or ethical business practices; each semester credit hour shall equal one CEPE; each quarter credit hour shall equal one CEPE;

(7) One CEPE may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) An Architect may be exempt from continuing education requirements for any of the following reasons:

(1) An Architect shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration;

(2) An inactive or emeritus Architect shall be exempt for any registration period during which the Architect's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Architect's registration may be returned to active status;

(3) An Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) An Architect who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Architect satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Architect complete one CEPE related to Sustainable or Energy-Efficient design; or

(5) An Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching architecture.

(g) When renewing his/her annual registration, each Architect shall attest to the Architect's fulfillment of the mandatory continuing education program requirements during the immediately preceding calendar year.

(1) Each Architect shall maintain a detailed record of the Architect's continuing education activities. Each Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of five years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the mandatory continuing education program requirements. If acceptable documentation is not provided within 30 days of request, claimed credit may be disallowed. The Architect shall have 60 calendar days after notification of

disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If an Architect is registered to practice more than one of the professions regulated by the Board and the Architect completes a continuing education activity that is directly related to more than one of those professions, the Architect may submit that activity for credit for all of the professions to which it relates. The Architect must maintain a separate detailed record of continuing education activities for each profession.

(4) An Architect may receive credit for up to 24 CEPH earned during any single registration period. A maximum of 12 CEPH that is not used to satisfy the continuing education requirements for a registration period may be carried forward to satisfy the continuing education requirements for the next registration period.

(h) Providing false information to the Board, failure to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

(g) As the term is defined in §1.29(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPH requirements.

RULE §7.10 General Fees

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law. Payment of fees through the Internet is an online service provided by Texas.gov, the official Web site of the State of Texas. The following additional payments for the online service are not retained by the Board:

(1) A person who uses the online service to pay fees with a credit card must pay an additional \$.25 plus 2.25% of the sum of the fee and \$.25.

(2) A person who uses online services to pay fees by utilizing the Automated Clearing House Network (“ACH” sometimes referred to as an “electronic check” or a “direct bank draft”) must pay \$1.00 per transaction instead of the fee referenced in Subsection (1).

Description	Architects	Landscape Architects	Registered Interior Designers	Total Fee Using Credit Card Payment	Total Fee Using ACH
Exam Application	\$100	\$100	\$100	\$102.51	\$101
Examination	***	**	*		
Registration by Examination--Resident	\$155	\$155	\$155	\$158.74	\$156
Registration by Examination--Nonresident	\$180	\$180	\$180	\$184.31	\$181
Reciprocal Application	\$150	\$150	\$150	\$153.63	\$151
Reciprocal Registration	\$200	\$200	\$200	\$204.76	\$201
Active Renewal--Resident	\$105	\$105	\$105	\$107.62	\$106
Active Renewal--Nonresident	\$200	\$200	\$200	\$204.76	\$201
Active Renewal 1-90 days late--Resident	\$157.50	\$157.50	\$157.50	\$161.30	\$158.50
Active Renewal > than 90 days late--Resident	\$210	\$210	\$210	\$214.98	\$211
Active Renewal 1-90 days late--Nonresident	\$300	\$300	\$300	\$307.01	\$301
Active Renewal > than 90 days late--Nonresident	\$400	\$400	\$400	\$409.26	\$401
Emeritus Renewal--Resident	\$10	\$10	\$10	\$10.48	\$11
Emeritus Renewal--Nonresident	\$10	\$10	\$10	\$10.48	\$11
Emeritus Renewal 1-90 days late--Resident	\$15	\$15	\$15	\$15.59	\$16

Emeritus Renewal > than 90 days late--Resident	\$20	\$20	\$20	\$20.71	\$21
Emeritus Renewal 1-90 days late--Nonresident	\$15	\$15	\$15	\$15.59	\$16
Emeritus Renewal > than 90 days late--Nonresident	\$20	\$20	\$20	\$20.71	\$21
Inactive Renewal--Resident	\$25	\$25	\$25	\$25.82	\$26
Inactive Renewal--Nonresident	\$125	\$125	\$125	\$128.07	\$126
Inactive Renewal 1-90 days late--Resident	\$37.50	\$37.50	\$37.50	\$38.60	\$38.50
Inactive Renewal > than 90 days late--Resident	\$50	\$50	\$50	\$51.38	\$51
Inactive Renewal 1-90 days late--Nonresident	\$187.50	\$187.50	\$187.50	\$191.97	\$188.50
Inactive Renewal > than 90 days late--Nonresident	\$250	\$250	\$250	\$255.88	\$251
Reciprocal Reinstatement	\$610	\$610	\$610	\$623.98	\$611
Change in Status--Resident	\$65	\$65	\$65	\$66.72	\$66
Change in Status--Nonresident	\$95	\$95	\$95	\$97.39	\$96
Reinstatement--Resident	\$685	\$685	\$685	\$700.67	\$686
Reinstatement--Nonresident	\$775	\$775	\$775	\$792.69	\$776
Certificate of Standing--Resident	\$30	\$30	\$30	\$30.93	\$31
Certificate of Standing--Nonresident	\$40	\$40	\$40	\$41.16	\$41
Replacement or Duplicate Wall Certificate--Resident	\$40	\$40	\$40	\$41.16	\$41
Replacement of Duplicate Wall Certificate--Nonresident	\$90	\$90	\$90	\$92.28	\$91
Duplicate Pocket Card	\$5	\$5	\$5	\$5.37	\$6
Reopen Fee for closed candidate files	\$25	\$25	\$25	\$25.82	\$26
Annual Business Registration Fee****	\$45	\$45	\$45	\$46.27	\$46
Business Registration Renewal 1-90 days late****	\$67.50	\$67.50	\$67.50	\$69.27	\$68.50
Business Registration Renewal >than 90 days late****	\$90	\$90	\$90	\$92.28	\$91
Examination--Record Maintenance	\$25	\$25	\$25	\$25.82	\$26
Returned Check Fee	\$25	\$25	\$25	\$25.82	\$26

Attachment 5-F: Draft Amendments to Rule 7.10

*Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification (“NCIDQ”). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

**Examination fees are set by the Board’s examination provider, the Council of Landscape Architectural Registration Boards (“CLARB”). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

***Examination fees are set by the Board’s examination provider, the National Council of Architectural Registration Boards (“NCARB”). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

****Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) Payment of fees for military service member, military veteran, or military spouse.

(1) In this subsection, the terms “military service member,” “military veteran” and “military spouse” shall have the meanings defined in §§1.29, 3.29, and 5.39 of the Board Rules.

(2) A military service member ~~Registrant~~ who is a Registrant in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service ~~in the U.S. military~~. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

(3) A military veteran whose military service, training, or education substantially meets all requirements of a license shall be exempt from payment of license application and examination fees paid to the state.

(4) A military veteran or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for registration in this state shall be exempt from payment of license application and examination fees paid to the state.

Agenda Item 6
Draft Rule Changes – Elimination of Reference to NCIDQ IDEP Program

Current Rule/Background

Currently, under Rule 5.31, an interior design candidate has two options for completing the experience requirement for eligibility for registration by exam. First, the candidate may complete two or more years of approved experience credit after graduation under the table of equivalents in Rule 5.202. Second, the candidate may complete the Intern Development Experience Program (IDEP) administered by NCIDQ. However, NCIDQ has eliminated the IDEP program for interior design candidates. Therefore, reference to the IDEP program in our rules has become obsolete.

Draft Amendments

The draft amendments modify Rules 5.31 and 5.202 to eliminate reference to the NCIDQ IDEP program.

Attached you will find the following supporting documents for your consideration:

- Attachment 6-B: Draft Amendments to Rule 5.31
- Attachment 6-C: Draft amendments to Rule 5.202
- Attachment 6-D: NCIDQ Bulletin

Rule 5.31 - Registration by Examination

(a) In order to obtain Interior Design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved Interior Design education and experience and shall successfully complete the Interior Design registration examination or a predecessor or other examination deemed equivalent by NCIDQ as more fully described in Subchapter C of this chapter. Alternatively, an Applicant may obtain Interior Design registration by examination by successfully completing the Architectural Registration Examination or another examination deemed equivalent by NCARB after fulfilling the prerequisites of §1.21 and §1.41 of this title relating to Board approval to take the Architectural Registration Examination for architectural registration by examination. For purposes of this section, an Applicant has "approved Interior Design education" if:

(1) The Applicant graduated from:

(A) a program that has been granted professional status by the Council for Interior Design Accreditation (CIDA) or the National Architectural Accreditation Board (NAAB);

(B) a program that was granted professional status by CIDA or NAAB not later than two years after the Applicant's graduation;

(C) a program that was granted candidacy status by CIDA or NAAB and became accredited by CIDA or NAAB not later than three years after the Applicant's graduation; or

(D) an Interior Design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a CIDA or NAAB accredited professional program;

(2) The Applicant has a doctorate, a master's degree, or a baccalaureate degree in Interior Design;

(3) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from an Interior Design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from a foreign Interior Design program approved or accredited by an agency acceptable to the Board.

~~(b) In addition to educational requirements, an applicant for order to obtain Interior Design registration by examination in Texas, an Applicant must also successfully complete the Interior Design Experience Program administered by the National Council for Interior Design Qualification or two years of approved experience as more fully described in Subchapter J of this chapter (relating to Table of Equivalents for Education and Experience in Interior Design).~~

(c) The Board shall evaluate the education and experience required by subsection (a) of this section in accordance with the Table of Equivalents for Education and Experience in Interior Design.

(d) For purposes of this section, the term "approved Interior Design education" does not include continuing education courses.

(e) An Applicant for Interior Design registration by examination who enrolls in an Interior Design educational program after September 1, 2006, must graduate from a program described in subsection (a)(1) of this section.

Attachment 6-B: Draft Amendments to Rule 5.31

(f) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

Rule 5.202 - Description of Approved Experience for Registration by Examination

(a) Every Applicant must successfully demonstrate that he/she has gained a minimum of two years of experience credit required for registration ~~by examination or successfully complete the Interior Design Experience Program administered by the National Council for Interior Design Qualification.~~

(b) ~~An Applicant who opts to fulfill experience requirements by obtaining two years of experience credit must do so in accordance with the following table subject to the following terms and conditions:~~

Description of Experience		Credit Allowed	Maximum Credit
ID-7	Diversified experience directly related to Interior Design as an employee working under the Direct Supervision of a Registered Interior Designer or architect	Full credit	No limit
ID-8	Diversified experience directly related to Interior Design when the experience is not under the Direct Supervision of a Registered Interior Designer or architect	Half credit	1 year
ID-9	Teaching on a full-time basis in a CIDA-accredited program in Interior Design	Full credit	1 year

(1) An Applicant must earn at least one year of experience credit under the conditions described in category ID-7.

(2) In order to earn credit in category ID-7 or ID-8, an Applicant must:

(A) work at least thirty-five (35) hours per week for a minimum of ten (10) consecutive weeks; or

(B) for half credit, work between twenty (20) and thirty-four (34) hours per week for a minimum of six (6) consecutive months.

(3) In order to earn credit in category ID-9, an Applicant must teach subjects that are directly related to the practice of interior design. An Applicant may earn one year of credit by teaching for twenty (20) semester credit hours or thirty (30) quarter credit hours.

(4) An Applicant may not earn credit for experience gained prior to the date the Applicant completed the educational requirements for Interior Design registration by examination in Texas, ~~unless the applicant is fulfilling the experience requirement by completion of the Interior Design Experience Program administered by the National Council of Interior Design Qualification.~~

~~(c) An Applicant who seeks to fulfill experience requirements by successfully completing the Interior Design Experience Program administered by the National Council for Interior Design Qualification must earn credit for at least 3,520 hours in accordance with the following chart subject to the following terms and conditions:~~

	Minimum Hours of Experience
1. Programming	570 Total
— a. Client Requirements	135
— b. Research	75
— c. Space and Conditions Analysis	125
— d. Client/User Interviews	45
— e. Life Safety and Code Requirements	90
— f. Problem Solving	100
2. Schematic Design	445 Total
— a. Design Concept	110
— b. Space Relationships	90
— c. Client Meetings	15
— d. Preliminary Drawings	90
— e. Preliminary Budget and Cost	75
— f. Color Concept	65
3. Design Development	1240 Total
— a. Space Planning	210
— b. Furniture, Fixtures, and Equipment Layout	140
— c. Lighting Plans and Preliminary Specs	145
— d. Electrical Plans and Preliminary Specs	75
— e. Reflected Ceiling Plan	85
— f. Plumbing Plans and Preliminary Specs	75
— g. Detailing Millwork, Custom Cab. and Furn.	135
— h. Furnishing and Textile Selection	95
— i. Materials and Finish Selection	90
— j. Budgeting	95
— k. Presentations Oral, Written, Graphic	95
4. Contract Documents	655 Total

Attachment 6-C: Draft Amendments to Rule 5.202

a. Working Drawings-Interior Construction	195
b. Working Drawings- Custom Cab. and Furn.	145
c. Spec Writing	140
d. Bidding and Contract Documents	80
e. Purchase Documents	95
5. Contract Administration	325 Total
a. Checking Shop Drawings	25
b. Job Observation	110
c. Installation Scheduling	30
d. Installation (*observation permitted)	40
e. Client and Contractor Meetings	45
f. Punch/Deficiency List	25
g. Site Inspection, Survey and Documentation	50
6. Professional Practice	285 Total
a. Office Procedures and Technology	85
b. Resource Library	55
c. Contact with Trade Reps	40
d. Contractual Agreements (*observation permitted)	105

(1) An Applicant may earn credit for each hour of work actually performed by the Applicant working under the Direct Supervision of a Registered Interior Designer or an architect. An Applicant may not earn credit for observing the work of another person, except as noted in Figure 22 TAC §5.202(c), items 5.d. and 6.d.

(2) An Applicant who opts to meet the experience requirements by completing the Program must file all experience records with the National Council for Interior Design Qualification and otherwise follow the procedures established by the Council to receive credit toward registration.

Changes To The IDEP System

CIDQ has been providing the Interior Design Experience Program (IDEP) system free of charge since the fall of 2012. Due to several factors related to the free software service, CIDQ has made the strategic decision to plan and implement significant changes to IDEP. **Therefore, beginning today, December 2, 2014 IDEP candidates should stop logging their hours in the MyNCIDQ system. Instead, the suggested work experience areas and their suggested hours formerly organized through IDEP will be listed in a free downloadable PDF on our website beginning December 15, 2014. The tracking of these hours will now be up to candidates to track on their own.** All pending IDEP applications in the current MyNCIDQ system will be voided.

If you are currently enrolled in the IDEP system, you must print all completed IDEP time logs by Friday, December 5 at 5 pm EST if you want to keep a record of the time you recorded via the IDEP online tool. When the MyNCIDQ system reopens on Monday, December 15, 2014 there will no longer be an option to track IDEP hours in the system. Tracking hours will now be each candidate's responsibility. No records of time logs from the old MyNCIDQ system will be kept by CIDQ. When you have reached the minimum work experience requirement to qualify for the NCIDQ Exam, you will complete the standard work experience forms to document your completion of these hours.

If you are an IDEP participant's supervisor or mentor, we suggest that you contact your candidate to discuss their plans for tracking their supervised experience hours, now and in the future, and download the forthcoming suggested Work Experience Outline that provides the task area breakdowns for work experience from this point forward.

Agenda Item 7

Funding for Architect Registration Examination Financial Assistance Fund (AREFAF)

Background

Previously, the Board delegated the discussion and possible reimplementation of the AREFAF surcharge to the Rules Committee. This matter was initially placed on the July 2014 committee agenda. However, because Mr. Anastos was not present for the committee meeting, the committee decided to postpone a decision on the issue until an architect's opinion could be considered.

The scholarship fund was created in 1999 by the 76th Texas Legislature to promote professional needs of the state, increase the number of architects, encourage economic development, and support architectural applicants. The enabling legislation for the scholarship fund is contained in Sections 1051.651 and 1051.653 of the Architecture Practice Act, which are attached for your convenience. From 2000 to 2003, the fund was seeded with a surcharge of \$10 collected from architect registrants (all statuses) on top of their renewal fees.

At its present rate and without Board action, the AREFAF scholarship fund will be depleted sometime in the next five years. It must be noted that changes in economic conditions, interest rates, demand, or eligibility requirements could affect the rate of depletion significantly. As a statutorily mandated scholarship, allowing the fund to drop to a zero balance would be contrary to legislative intent. However, without a source of revenue, the fund balance will continue to deplete. The question, therefore, is whether the fund has decreased to a level that the Board should re-institute a scholarship surcharge, and, if so, in what amount.

Options:

A variety of options are available to the Board, ranging from allowing the Fund to continue to deplete, to maintaining present levels or growing the fund via a reinstated surcharge on Architects.

The following chart, entitled "AREFAF Fund Projections by Fiscal Year" includes projections through 2029, assuming scholarship fees ranging from \$0 to \$3.00. If continuing trends hold, the fund will be depleted in 2019 or 2020. A \$2.00 fee would result in near-maintenance of present fund levels.

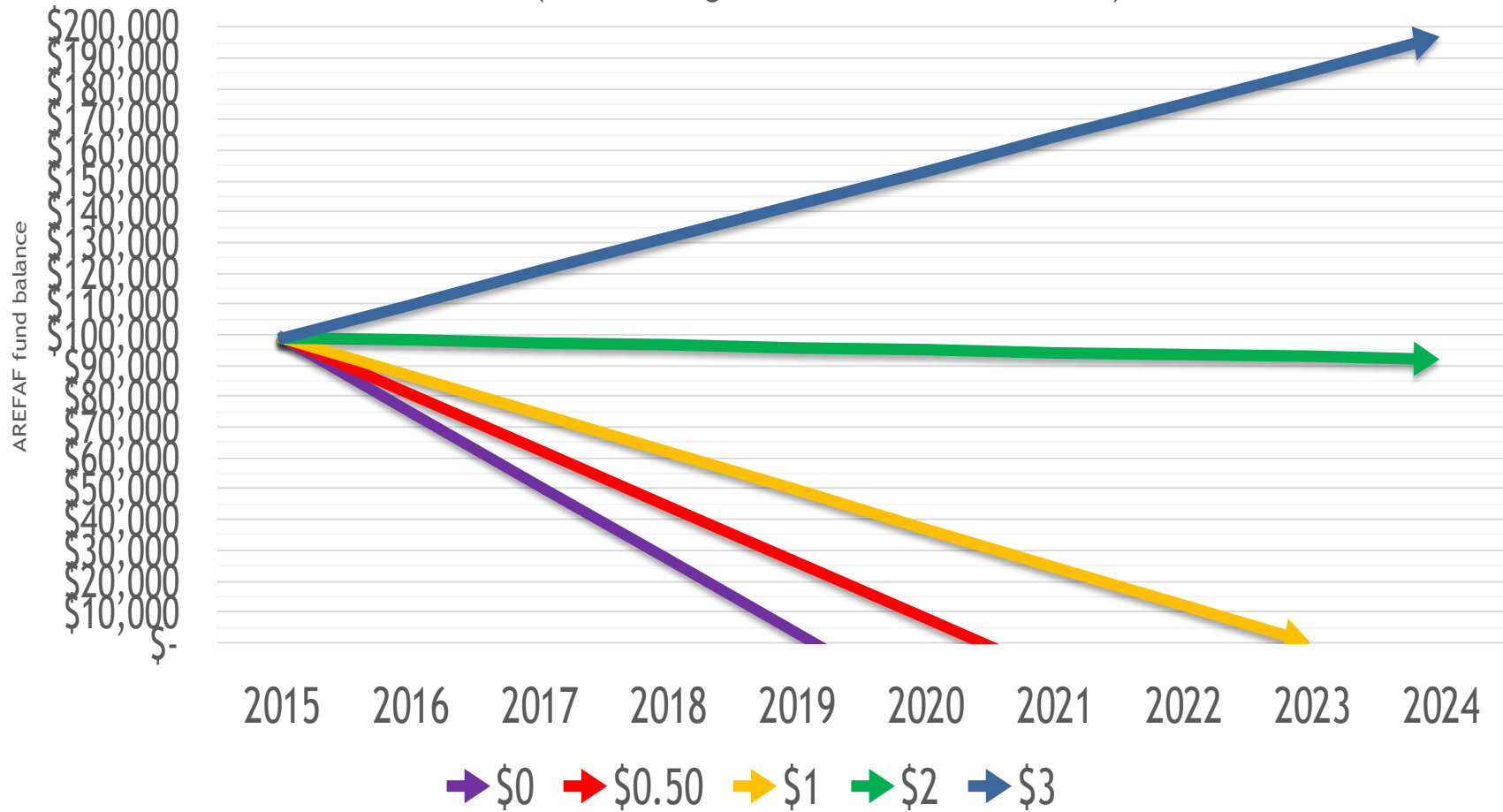
Attached you will find the following supporting documents for your consideration:

- Attachment 7-B: "AREFAF Fund Projections by Fiscal Year" Chart
- Attachment 7-C: Sections 1051.651 of the Architecture Practice Act
- Attachment 7-D: Section 1051.653 of the Architecture Practice Act

Attachment 7-A: Summary of Funding Issues for AREFAF

AREFAF Fund Projections by Fiscal Year

(five surcharge amounts shown for context)



Sec. 1051.651. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by this chapter or by the General Appropriations Act.

(b) The board shall set the required renewal fee for:

(1) a resident of this state in an amount that is equal to the sum of:

(A) the amount determined by the board as reasonable and necessary to cover administrative costs; and

(B) an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section 1051.653; and

(2) nonresidents in an amount determined by the board.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003. This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. [7](#), 84th Legislature, Regular Session, for amendments affecting this section.

Section 1051.653. EXAMINATION FEE SCHOLARSHIPS. (a) The board shall administer scholarships to applicants for examination under this article in a manner the board determines best serves the public purpose of:

- (1) promoting the professional needs of the state;
- (2) increasing the number of highly trained and educated architects available to serve the residents of the state;
- (3) improving the state's business environment and encouraging economic development; and
- (4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(b) In determining what best serves the public purpose of the scholarships as described by Subsection (a), the board shall consider at least the financial need of each person who applies for a scholarship under this section.

(c) The amount of the scholarship is the lesser of:

- (1) \$500; or
- (2) the amount of the required examination fee.

(d) Scholarships under this section are funded by the amount added to each renewal fee under Section 1051.651(b). The board may not use more than 15 percent of the amount appropriated to the board for scholarships under this section to pay the costs of administering the scholarships.

Agenda Item 8
Draft Amendment to Rule 7.7 – Eligibility to Petition for Rulemaking

Current Rule/Background

In addition to describing negotiated rulemaking procedures, Rule 7.7 provides guidance on Board procedures regarding petitions for rulemaking, which are authorized under Govt. Code Sec. 2001.021.

Recently, the legislature passed HB 763, which was signed by the governor and became effective on June 9, 2015. HB 763 amended Govt. Code Sec. 2001.021 to limit eligibility to petition for rulemaking to residents, business entities, governmental subdivisions, or other public or private organizations that are located in Texas. As currently written, Rule 7.7 describes certain information that must be contained in the petition, including an explanation of the rule and other supporting information. However, it does not address eligibility to file such petitions.

Proposed Amendments

The proposed draft modifies the rule as follows:

- The title of the rule is changed to reflect that the rule concerns petitions for rulemaking as well as negotiated rulemaking;
- The rule limits eligibility to file a petition for rulemaking to the individuals and entities described in Govt. Code Sec. 2001.021; and
- The rule requires the petition to include the identity of the petitioner and information to demonstrate eligibility to petition for rules. Staff recommends adoption of the proposed amendments.

Attached you will find the following supporting documents for your consideration:

- Attachment 8-B: Draft Amendments to Rule 7.7
- Attachment 8-C: House Bill 763

RULE §7.7 Petitions for Rulemaking and Negotiated Rulemaking

(a) It is the policy of the Board to encourage public input and negotiation in the Board's rulemaking process.

(b) A petition to initiate a rulemaking proceeding pursuant to §2001.021, Government Code, must be submitted to the Board's offices in writing. A petition must include:

(1) a brief explanation of the proposed rule;

(2) the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in the same manner as an amendment to legislation that clearly identifies any words to be added or deleted from the existing text by underscoring added words and striking through words to be deleted;

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it;

(4) an explanation of how the proposed rule would protect life, health, property, and public welfare within the jurisdiction of the Board;

(5) all available data or information showing a need for the proposed rule; ~~and~~

(6) the identity of the petitioner and sufficient information to demonstrate eligibility to petition for rulemaking under subsection (c); and

~~(7)~~ (7) such other information that the Board or the staff of the Board may request.

(c) Eligibility to petition for rulemaking under subsection (b) shall be limited to:

(1) a resident of this state;

(2) a business entity located in this state;

(3) a governmental subdivision located in this state; or

(4) a public or private organization located in this state that is not a state agency.

~~(d)~~ (d) The Board may initiate a negotiated rulemaking process pursuant to Chapter 2008, Government Code, upon:

(1) the filing of a petition to initiate the rulemaking proceeding under subsection (b) of this section;

(2) the filing of a petition to initiate negotiated rulemaking proceeding with regard to a rule that has been proposed by the Board; or

(3) a determination by the Board that negotiated rulemaking would be beneficial to the Board's consideration of a proposed rule.

~~(d)~~ (e) The Board may select any method of negotiation specified in Chapter 2008, Government Code, including the appointment of a convener, a negotiated rule-making committee, and a facilitator. The Chairman shall make all appointments involved in the negotiated rule-making process.

~~(e)~~ (f) The Board may adopt, amend, or refuse to adopt a rule created through the negotiated rulemaking process. The Board may not adopt any rule or any provision within a rule that the Board has no legal authority to adopt.

A BILL TO BE ENTITLED
AN ACT

relating to a petition to a state agency for adoption of rules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2001.021, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition. If a state agency requires signatures for a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state.

(d) For the purposes of this section, an interested person must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state;

or

(4) a public or private organization located in this state that is not a state agency.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Agenda Item 9
Draft New Rule 7.15 – Employee Training

Background

Recently, the legislature passed HB 3337, which was signed by the governor and becomes effective on September 1, 2015. HB 3337 amends previously existing provisions that authorize state agencies to pay tuition and other expenses for employees enrolled in training or educational programs. The amendments are focused on providing greater oversight of tuition reimbursement, and include the following:

- Under amendments to Govt. Code Sec. 656.047, an agency is limited to reimbursement of tuition expenses for program courses that are successfully completed by an administrator or employee; and
- Amendments to Govt. Code Sec. 656.048 require agencies to adopt rules stating that reimbursement of tuition expenses from an institution of higher education must be approved by the executive head of an agency.

Currently, the Board does not have rules regarding reimbursement of expenses relating to employee training or education.

Draft Rule

The draft rule includes the following provisions:

- The rule requires the Board to adopt policies and procedures which address:
 - the eligibility of the agency's administrators and employees for training and education supported by the agency; and
 - the obligations assumed by the administrators and employees on receiving the training and education.
- The rule conditions reimbursement of an administrator's or employee's tuition expenses on satisfaction of the following requirements:
 - Eligibility requirements contained in the Board's policies and procedures are satisfied;
 - The program course is completed successfully by the administrator or employee at an accredited institution of higher education; and
 - The reimbursement is authorized by the Executive Director.

Attached you will find the following supporting documents:

- Attachment 9-B: Texas Government Code Secs. 656.047, .048, and .102, with underline and strikethrough formatting indicating HB 3337 revisions
- Attachment 9-C: Draft Rule 7.15
- Attachment 9-D: Draft Policies and Procedures

Attachment 9-A: Summary of New Rule Regarding Employee Training

Sec. 656.047. PAYMENT OF PROGRAM EXPENSES.

(a) Except as provided by this section or other law, a state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(b) For an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Section 61.003, Education Code, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education.

Sec. 656.048. RULES RELATING TO TRAINING AND EDUCATION.

(a) A state agency shall adopt rules relating to:

(1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and

(2) the obligations assumed by the administrators and employees on receiving the training and education.

(b) A state agency shall adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Section 656.047(b), the executive head of the agency must authorize the tuition reimbursement payment.

Sec. 656.102. AGENCY POLICY.

(a) Before a state agency spends any money on training for a state employee, the state agency must adopt a policy governing the training of employees, in addition to the rules required by Section 656.048, that requires training to relate to an employee's duties following the training.

(b) The policy must:

(1) provide clear and objective guidelines to govern tuition reimbursement for an administrator or employee of a state agency who is enrolled in training for which the administrator or employee seeks reimbursement from this state; and

(2) address tuition reimbursement for nontraditional training, including online courses or courses not credited towards a degree.

(c) The state agency shall post the policy adopted under this section on the employment section of the agency's Internet website.

Rule §7.15 Employee Training

(a) The Board shall adopt policies and procedures relating to training and education of employees under Chapter 656 of the Texas Government Code. Such policies shall address the following matters:

(1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and

(2) the obligations assumed by the administrators and employees on receiving the training and education.

(b) Reimbursement of an administrator's or employee's tuition or other expenses related to a training or education program offered by an institution of higher education or private or independent institution of higher education shall not occur unless the following conditions are satisfied:

(1) Eligibility requirements contained in the Board's policies and procedures have been satisfied;

(2) The program course is completed successfully by the administrator or employee at an accredited institution of higher education; and

(3) The reimbursement is authorized by the Executive Director.



**TEXAS Board of
Architectural Examiners**
Architects • Landscape Architects • Registered Interior Designers

Policy Title:	Training and Staff Development: Educational Assistance Program	Policy Number	HR-011
Originally Issued:	December 2011	Revisions:	Apr 01, 2012 May 30, 2013 Sep 01, 2015
Approved By:	Julie Hildebrand, Executive Director		
Responsible Department:	Executive Administration – Human Resources		
Primary Policy Custodian	Operations Manager/Human Resources		

Purpose

The TBAE provides training and development opportunities to improve productivity and to help employees develop their knowledge, skills and abilities so that they might become better qualified to perform the duties of their present jobs and advance to more responsible positions within the agency. Programs for the training and education of state administrators and employees materially aid effective state administration, and public money spent on those programs serves as important public purpose.

The educational assistance program is not an employee benefit, right or entitlement; it is a management program for workforce development. Denial of participation in the educational assistance program is not grievable, except on grounds of discrimination.

Use of the educational assistance program shall be identified, described and documented in the employee’s development plan within his/her work plan (Performance Counseling Checklist/Record). This provides a measurable link between employees’ increased competency and the agency’s workforce planning efforts.

The educational assistance program provides reimbursement of academic costs if funds are available at the agency level, and/or time off the job if the course is available only during working hours.

References and related Resources or Statutory Authority

Section 656.042, Texas Government Code, State Employees Training Act

Scope

Staff members of the Texas Board of Architectural Examiners.

Procedures

The Agency Training Plan

The Human Resources department will develop an annual Agency Training Plan and submit the plan to the executive director for approval prior to publication. The plan will:

1. Provide an overview of the agency's current training requirements and available courses, including specific course descriptions and completion timelines; and
2. Identify current job-related training needs based on the annual training needs assessment.
3. Supervisors are responsible for ensuring that subordinate employees are scheduled for required training within the timelines established in the Agency Training Plan.

Courses Taken "At Agency Request"

At the discretion of the employee's supervisor, each TBAE employee is eligible to participate in training activities that are related to their current duties or prospective duties. An employee may also be required to participate in certain training activities as a condition of employment or the continued employment. Professional continuing education is required for attorneys and Information Resource Manager in order to maintain licensure or certification.

An employee may be required to participate in certain training activities as a condition of employment or continued employment. All employees of TBAE are required to complete:

1. Courses mandated by law or regulation as a job requirement for continued employment, such as:
Equal Employment Opportunity (EEO) compliance; employment discrimination and sexual harassment, and AIDs and HIV training every two years; new employees must complete this training during orientation or within thirty days from the date of hire and attend supplemental training every two years;
2. The TBAE must coordinate agency training with the technology Department of Information Resources (DIR). The TBAE must use training offered or coordinated by the DIR if the training meets agency requirements and is cost-competitive.
3. Courses which provide knowledge and skills directly related to maintaining or improving current job skills.
4. Courses directly related to the employee's current job or a documented workforce needs.

The TBAE may contract with another state, local, or federal department, agency, or institution, including a state-supported college or university, to train or educate its administrators and employees or may join in presenting a training or educational program.

Applying for Approval Prior to taking the Course

Employees may request to attend a training program by submitting the request in writing and providing copies of brochures or other information to the supervisor. The request to participate in a training program will then be authorized by the supervisor and approved by the executive director before the employee enrolls. **Approval to participate in a training program is not automatic and is contingent on the availability of budgeted funds and executive director approval.**

- a. The supervisor will review an employee's job description and job performance to determine that the training or education is related to the duties or prospective duties of the employee before recommending training.
- b. The supervisor will present the recommended training in writing along with any relevant brochures or other material to the HR Program Specialist. The supervisor in consultation with Human Resources will determine if the training is needed and appropriate.
- c. The Manager of Operations will prepare the Purchase Request for training and seek signature approval from the Executive Director.
- d. Upon receipt of the approved purchase order, the HR Program Specialist will schedule the employee for training and provide notification to the employee and supervisor.
- e. Within two weeks of the completion of the training, the employee must submit a training certificate of completion or other proof of satisfactory course completion to their supervisor along with a completed Course Evaluation Form/Certificate of Satisfactory Completion; and
- f. Documentation of attendance will be maintained in the employee's personnel file. The supervisor will submit these documents to the Human Resources Division to be filed in the individual's personnel file.

Tuition Assistance Program

The State Employees Training Act authorizes the TBAE to use public funds to provide training and education to TBAE employees. Such training or education is intended to be applicable to current or prospective duty assignments.

Active TBAE employees who are classified as "full-time/part-time" employees who have been employed by TBAE for at least six months of continuous service on or immediately prior to the course start date and have earned an overall rating of "Meets Standard" or "Exceeds Standard" in their latest performance appraisal, are eligible to apply for reimbursement for qualified tuition expenses. (For purposes of this policy, "active" means employees who are not on a leave of absence at the time of taking the course.)

Subject to the availability of funds, tuition reimbursement for cost of tuition, required textbooks and course-related fees, TBAE staff will receive approved expenses incurred and associated with an eligible course of study up to a maximum of \$1,000. Limits apply to the year in which the reimbursement is paid, not the year in which the expenses were incurred. Unused Tuition Assistance allotments do not carry forward into the next calendar year.

The amount of reimbursement may be reduced if educational assistance is being received from other sources, such as scholarships and government sponsored grants. If such cases, reimbursements will only be given for the difference between the amount received from other sources and the actual course cost, up to the maximum reimbursement amount. Failure to disclose funding sources may be considered fraudulent and subject to disciplinary action up to and including employment termination.

The Governor's Office has provided general guidelines for the approval of the following types of classes are eligible for reimbursement:

1. Undergraduate Level: College degree programs, both undergraduate and graduate.
2. Out-of-agency training:

Individual courses not leading to a degree must be related to the employee's job and be taken at an accredited college or university. A grade must be given for participation. Eligible college programs must be taken at a school that is fully accredited by one of the national accrediting agencies and found in the U.S. Department of Education's directory of post-secondary institutions. Correspondence and online courses must be taken through schools that are members of the National University Continuing Education Association. The same eligibility requirements for individual courses apply to correspondence courses.

3. Interagency training
4. Internship training
5. Certification/Licensing (Post-Employment): Incumbent employees who meet minimum educational requirements for employment and for whom certification or licensing is required after employment or is deemed desirable by management are eligible for educational assistance under the following condition: Certification or licensing is mandated or is a policy requirement of the TBAE.

The TBAE may use public funds for a given fiscal year to pay expenses for training if it occurs during the fiscal year. To the extent that it is cost-effective, TBAE may use funds for a particular fiscal year to pay expenses for training that will occur partly or entirely during a different fiscal year. The TBAE training and educational program may include:

1. Preparing for technological and legal developments
2. Increasing work capabilities
3. Increasing the competence of TBAE's employees

The TBAE may spend agency funds to pay the salary, tuition and other fees, travel and living expenses, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

Applying for Approval Prior to taking the Course

Employees seeking to apply for approval for a course must complete an Employee **Tuition Assistance Program Application Form** (include link to form here) within 14 days of the start date of the course.

1. Obtain information about the Program Policy and Procedures
2. Submit a Pre-Approval Application to the HR department
3. Employees will receive written notification from the HR department advising whether their application is approved, denied by the executive director, or is incomplete.
4. Approvals are valid only for the class and semester originally approved.
5. If an approved course is cancelled, the employee must immediately notify the HR department.

Applying for Reimbursement after Completing a Course

Employees seeking to apply for reimbursement after successfully completing a pre-approved course must submit a **Tuition Reimbursement Request Form** (include link to form here).

1. The request for reimbursement must be submitted within 30 calendar days of the course end-date to the HR department. Management may consider any current disciplinary action for job performance or personal conduct prior to approval of the application for reimbursement. If funds are available, the applicant shall receive reimbursement of approved academic costs upon submitting evidence of satisfactory completion of a preapproved course:
2. An employee must complete the course with a grade **"C"** or better. If grades are not normally awarded, a statement of satisfactory completion must be presented; for instance, this may include a pass/fail situation. **An "Incomplete" shall not be reimbursed until a final grade is issued.**
 - a. Evidence of satisfactory grade (**"C"** or better) along with course name and/or number
 - b. Itemized receipts for tuition, textbooks, and registration fees (including lab and/or computer fees)
 - c. Verification of course start and end dates; this may be a copy of the registration form or a copy of the course schedule.
3. The completed Tuition Reimbursement Request Form and required documentation should be submitted to the HR department. Once received the reimbursement will take 30 business days to process following the submission of all the appropriate paperwork. Approved reimbursements will be deposited, along with the employee's regular pay, into the employee's bank account for those employees who have direct deposit of their pay.

NOTE: All these items must show the employee's name and school name or be included on school letterhead in order to be approved.

Employee Transfers and Separations

Employees who separate from State service prior to the completion of the course are not eligible for reimbursement. If an employee has been approved for educational assistance by reason of Reduction in Force (i.e. layoff), TBAE may honor its reimbursement commitment. However, if any employee's separation date is prior to the beginning of the course, TBAE is not obligated to reimburse the employee. If the course work has not yet started when the layoff notice is delivered, the approval will be cancelled.

Maintaining Records

The Human Resources is responsible for retaining records, on a fiscal year basis of educational assistance activity. This information shall include the following:

1. Number of employees participating in the program
2. Amount (tuition and fees) reimbursed
3. Number of employees taking courses at agency's request
4. Number of employees taking courses for mandated/required certification/licensing

Review Cycle

Policies and procedures are reviewed at least every two years or updated as required to ensure they reflect current information and requirements. Policies and procedures are reviewed in consultation with staff, management, and agency regulatory bodies to ensure they accommodate and are reflective of the needs of our registrants, oversight agencies, and best practice guidelines.

Agenda Item 10
Discussion of Disciplinary Issues Relating to Unauthorized Use of Seal

Background

At the May 2014 Board meeting, the Board considered a case involving a homeowner who had hired an architect to ensure that his house could meet the City of Austin “McMansion” ordinance. The homeowner (Respondent) removed the architect’s seal from a separate document and affixed it to plans the Respondent submitted to the City for permit. Staff had recommended a penalty of \$8,000, but the Board increased the penalty to \$16,000. During the discussion over penalties, questions were raised about whether the unauthorized use of a seal would be considered a major or moderate violation.

In Rule 1.177 (and Rules 3.177, and 5.187), the Board has promulgated rules regarding administrative penalties. While rule subsections 1.177(2)(D)&(E) specifically identify unregistered practice of architecture and plan-stamping as “major” violations subject to a penalty up to \$5,000, the rules do not address the unauthorized use of a seal.

Issue Presented:

Should the Board adopt amendments to Rules 1.177, 3.177, and 5.187 which specifically identify unauthorized use of a seal as a major violation?

Alternatively, should the Board adopt an amendment to the penalty matrix contained in Rule 1.232, which would specifically identify unauthorized use of a seal as a major penalty, or provide for a specific monetary fine?

As a starting point, Staff has attached as “**Attachment 10-B**” copy of Rule 1.177 with a draft amendment that specifically identifies the unauthorized use of an architect’s seal as a major penalty. Additionally, for reference, Staff has include as “**Attachment 10-C**” a copy of Rule 1.232 with the attached penalty matrix.

RULE §1.177 Administrative Penalty Schedule

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to guide the Board's assessment of an appropriate administrative penalty:

(1) The Board shall consider the following factors to determine whether the violation is minor, moderate, or major:

(A) Seriousness of misconduct and efforts to correct the ground for sanction:

(i) Minor--the respondent has demonstrated that he/she was unaware that his/her conduct was prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the conduct or the respondent has demonstrated that there were significant extenuating circumstances or intervening causes for the violation; and the respondent has demonstrated that he/she provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public.

(ii) Moderate--the violation shows that the respondent knowingly disregarded a standard or practice normally followed by a reasonably prudent person under the same or similar circumstances. A violation of a Board order shall constitute, at a minimum, a moderate violation.

(iii) Major--the conduct demonstrates gross negligence or recklessness or resulted in a threat to the health or safety of the public and the respondent, after being notified of the alleged violation intentionally refused or failed to take prompt and remedial action.

(B) Economic harm:

(i) Minor--there was no apparent economic damage to property or monetary loss to the project owner or other involved persons and entities.

(ii) Moderate--economic damage to property or monetary harm to other persons or entities did not exceed \$1,000, or damage exceeding \$1,000 was reasonably unforeseeable.

(iii) Major--economic damage to property or economic injury to other persons or entities exceeded \$1,000.

(C) Sanction history:

(i) Minor--the respondent has not previously received a written warning, advisory notice or been subject to other enforcement proceedings from the Board.

(ii) Moderate--the respondent was previously subject to an order of the Board or other enforcement proceedings which resulted in a finding of a violation of the laws or rules over which the TBAE has jurisdiction.

(iii) Major--the respondent has received at least two prior written notices or has been subject to two disciplinary actions for violation of the rules and laws over which the TBAE has jurisdiction.

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) Minor violations--if the violation is minor in every category described in paragraph (1) of this section, an administrative penalty of not more than \$500 shall be imposed.

(B) Moderate violations--if the violation is moderate in any category described in paragraph (1) of this section, an administrative penalty of not more than \$2,000 shall be imposed.

(C) Major violations--if the violation is major in any category described in paragraph (1) of this section or if the Board determines that the facts of the case indicate a higher penalty is

necessary in order to deter similar misconduct in the future, an administrative penalty of not more than \$5,000 shall be imposed.

(D) Because of the threat to human health, safety and well-being which necessarily arises out of a Nonregistrant preparing and issuing architectural plans and specifications the Board possesses a compelling interest in ensuring that architectural plans and specifications are prepared and issued only by a registered architect or by a person who is working under the active and documented Supervision and Control of a registered Architect when required by law.

(i) If the evidence establishes that Architectural plans and specifications for a project that is not exempt from the Architects' Practice Act were prepared by a person who is not registered to engage in the Practice of Architecture and was not working under the active and documented Supervision and Control of an Architect the violation shall be presumed to be a major violation and each sheet of architectural plans or separate section of the specifications shall be considered a separate violation for purposes of calculating and imposing administrative penalties.

(ii) If the evidence establishes that a non-registrant engaged in the unauthorized use of an architect's seal, or used a copy or replica of an architect's seal, the violation shall be presumed to be a major violation and each separate unauthorized use of a seal shall be considered a separate violation for purposes of calculating and imposing administrative penalties.

(E) The unauthorized use of an architect's seal presents a threat to human health, safety and well-being in that the presence of an architect's seal would necessarily arise out of architectural plans and specifications being falsely issued under seal. The Board possesses a compelling interest in ensuring that architectural plans and specifications which include an architect's seal are prepared and issued only by a registered architect or by a person who is working under the active and documented Supervision and Control of a registered Architect when required by law. If the evidence establishes that Architectural plans and specifications for a project that is not exempt from the Architects' Practice Act were prepared by a person who is not registered to engage in the Practice of Architecture and was not working under the active and documented Supervision and Control of an Architect the violation shall be presumed to be a major violation and each sheet of architectural plans or separate section of the specifications shall be considered a separate violation for purposes of calculating and imposing administrative penalties.

(E) Because of the threat to human health, safety and welfare which necessarily arises from Nonregistrants engaging in the Practice of Architecture the Board has a compelling interest in ensuring that only those persons who are registered to engage in the Practice of Architecture or whose work is conducted under the active and documented Supervision and Control of a registered architect engage in the Practice of Architecture. If the evidence establishes that an Architect has sealed architectural plans and separately numbered section of the specifications without having exercised active and documented Supervision and Control of the Nonregistrants' activities the Board shall presume such conduct by the sealing architect to be a major violation and each sheet of architectural plans or separate section of the specifications shall be considered a separate violation for purposes of calculating and imposing administrative penalties.

(F) The agency is responsible for protecting the public's health, safety and welfare by interpreting and enforcing the Architects' Practice Act. In fulfilling this statutory duty the Board depends upon, and expects, that Registrants and Applicants will provide complete, truthful and accurate information to the Board upon request. This prompt and accurate provision of information is essential to protecting the public's health, safety and welfare.

(G) An Architect, Candidate, or Applicant who fails, without good cause, to provide information to the Board under provision of §1.171 of this subchapter (relating to Responding to

Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its responsibilities. For these reasons a violation of §1.171 of this subchapter shall be considered a moderate violation if a complete response is not received within 30 days after receipt of the Board's written inquiry. Any further delay constitutes a major violation. Each 15 day delay thereafter shall be considered a separate violation of these rules.

(3) In order to determine the appropriate amount in a penalty range described in paragraph (2) of this section, the Board shall consider the factors described in paragraph (1) of this section.

(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this section.

RULE §1.232 Board Responsibilities

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action).

However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the

original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty or reprimand
Unlawful practice of architecture while registration is on emeritus status	§1.67(b)	Administrative penalty and cease and desist order
Practice of architecture while registration is inactive	§1.68	Administrative penalty and cease and desist order
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty or suspension
Failure to timely complete required continuing education program hours	§1.69(b)	Administrative penalty of \$500; subject to higher penalties or suspension for second or subsequent offenses
Falsely reporting compliance with mandatory continuing education requirements	§1.69(g)	Administrative penalty of \$700; subject to higher penalties or suspension for second or subsequent offenses
Failure to use appropriate seal or signature	§1.102 §1.104(c)	Administrative penalty or reprimand
Failure to seal documents	§1.103 §1.105 §1.122(c),(e)	Administrative penalty or reprimand
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§1.103(b)	Administrative penalty or reprimand

Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§1.104(a) and (b) §1.122(c) and (e)	Suspension or revocation
Failure to take reasonable steps to notify sealing Architect of intent to modify that architect’s sealed documents	§1.104(d)	Administrative penalty or reprimand
Failure to indicate modifications or additions to a document prepared by another Architect	§1.104(b) and (d)	Suspension, administrative penalty, or reprimand
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty or reprimand
Unauthorized use of a seal or a copy or replica of a seal or unauthorized modification of a document	§1.104(b) and (c)	Administrative penalty, reprimand, or suspension
Violation of requirements regarding prototypical design	§1.105	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty or reprimand
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	Suspension, revocation, or refusal to renew registration
Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	Suspension, revocation, or refusal renew registration
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty, cease and desist order, or both
Failure to timely notify the Board upon dissolution of a business entity or association or loss of	§1.124(c)	Administrative penalty, reprimand, or suspension

lawful authority to offer or provide architecture		
Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered	§1.124 §1.146(a)(2)(B)	Administrative penalty, cease and desist order, or both
Gross incompetency	§1.142	Suspension, revocation, or refusal to renew registration
Recklessness	§1.143	Suspension, revocation, or refusal to renew registration
Dishonest practice	§1.144(a), (c)	Suspension revocation, or refusal to renew registration
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§1.144(b)	Suspension, or revocation, and payment of restitution
Conflict of interest	§1.145	Suspension, revocation, or refusal to renew registration
Participating in a plan, scheme or arrangement to violate the Act or rules of the Board	§1.146(a)	Administrative penalty, suspension, revocation, or refusal to renew registration
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal	§1.146(b), (c)	Administrative penalty or reprimand
Submission of a competitive bid in violation of the Professional Services Procurement Act	§1.147	Suspension or revocation
Disclosure of fee information inconsistent with the Professional Services Procurement Act	§1.147	Administrative penalty or reprimand
Disclosure of information with the intent to indirectly disclose fee information	§1.147	Suspension or revocation

Unauthorized practice or use of title "architect"	§1.123 §1.148	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration
Criminal conviction	§1.149	Suspension or revocation
Gross incompetence caused by substance abuse	§1.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety
Violation by Applicant regarding unlawful use title "architect", unlawful practice, or criminal convictions	§1.148 §1.149 §1.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply, or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	§1.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty
Unregistered individual engaging in construction observation for a nonexempt building	§1.217	Administrative penalty, reprimand, denial registration or refusal to renew, reinstate, or reactivate registration
Failure to report course of action likely to have material adverse effect on safe use of building or failure to refuse to consent to the course of action	§1.216	Suspension, revocation or refusal to renew registration

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §1.177 of this chapter (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.

Agenda Item 11
Consideration of Foreign Landscape Architecture Degrees

Current Rule/Background

Currently, under Rule 3.21(a)(1)(D), an applicant for landscape architect registration by examination who has graduated from a foreign program must have the foreign degree evaluated by Education Credential Evaluators (ECE) or another organization acceptable to the Board. In order to qualify, ECE must conclude that the program “is substantially equivalent to an LAAB accredited professional program.” However, ECE has informed TBAE that it cannot give an evaluation concluding that a foreign degree is equivalent to a Landscape Architect Accrediting Board (LAAB) professional degree. Furthermore, Staff is unaware of any other organization that would be able or willing to make this determination. Therefore, the rule, as written, forecloses eligibility by examination for foreign graduates of landscape architecture programs.

Draft Amendments

The draft amendment to Rule 3.21 would grant eligibility to applicants with a foreign degree that is evaluated by ECE and deemed to be equivalent to a doctorate, master’s degree or baccalaureate degree in landscape architecture.

Additionally, Rule 3.191 would be amended to require three years of experience under the Texas Table of Equivalents for Experience in Landscape Architecture, as opposed to the two years that would be required of a LAAB-accredited program graduate.

Draft Amendments to Rules 3.21 and 3.191 are provided for your consideration as Attachment 11-B.

3.21 REGISTRATION BY EXAMINATION

(a) In order to obtain landscape architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from:

(A) a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB),

(B) a landscape architectural education program that became accredited by LAAB not later than two years after the Applicant's graduation,

(C) a landscape architectural education program that was granted candidacy status by LAAB and became accredited by LAAB not later than three years after the Applicant's graduation, or

(D) a landscape architectural education program outside the United States where an evaluation by Education Credential Evaluators or another organization acceptable to the Board has concluded that the program is substantially equivalent to ~~an LAAB-accredited professional program;~~ a doctorate, master's degree or baccalaureate degree in landscape architecture from a program located in the United States.

(2) shall successfully demonstrate that he/she has gained sufficient ~~at least two (2) years'~~ actual experience working directly under a licensed landscape architect or other experience approved by the Board ~~pursuant to~~ in accordance with the Texas Table of Equivalents for Experience in Landscape Architecture contained in §3.191 of this Chapter ; and

(3) shall successfully complete the landscape architectural registration examination as more fully described in Subchapter C of this chapter.

(b) An Applicant who applies for landscape architectural registration by examination on or before August 31, 2011 and who commenced his/her landscape architectural education or experience prior to September 1, 1999, is subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999. This subsection is repealed effective September 1, 2011.

(c) For purposes of this section, an Applicant shall be considered to have "commenced" his/her landscape architectural education upon enrollment in an acceptable landscape architectural education program. This subsection is repealed effective September 1, 2011.

(d) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

3.191 DESCRIPTION OF EXPERIENCE REQUIRED FOR REGISTRATION BY EXAMINATION

(a) Pursuant to Section 3.21(a)(1)(A-C) of Subchapter B, an Applicant who graduated from a program granted professional status by the Landscape Architectural Accrediting Board (LAAB) must successfully demonstrate that he/she has gained at least two (2) years' actual experience in accordance with the Texas Table of Equivalents for Experience in Landscape Architecture contained in subsection (c). ~~following table:~~

(b) Pursuant to Section 3.21(a)(1)(D) of Subchapter B, an Applicant who graduated from a qualifying landscape architectural education program outside the United States must successfully demonstrate that he/she has gained at least three (3) years' actual experience in

accordance with the Texas Table of Equivalents for Experience in Landscape Architecture contained in subsection (c).

(c) The Texas Table of Equivalents for Experience in Landscape Architecture is as follows:

DESCRIPTION OF EXPERIENCE		Portion of Credit Awarded	Maximum Credit Awarded
LA-1	Diversified experience directly related to landscape architecture as an employee working under the direct supervision of a registered landscape architect	full credit	no limit
LA-2	Diversified experience directly related to landscape architecture as an employee working under the direct supervision of a registered architect or civil engineer	full credit	1 year
LA-3	Diversified experience in landscape architecture directly related to on-site construction, maintenance, or installation procedures when the experience is not under the direct supervision of a registered landscape architect, architect, or civil engineer	half credit	1 year
LA-4	Teaching on a full-time basis in an LAAB-accredited program in landscape architecture	full credit	1 year

~~(b)~~ (d) An Applicant must earn at least one year of credit under the conditions described in category LA-1.

~~(e)~~ (e) In order to earn credit in category LA-1, LA-2, or LA-3, an Applicant must:

(1) work at least thirty-five (35) hours per week for a minimum of ten (10) consecutive weeks; or

(2) for half credit, work between twenty (20) and thirty-four (34) hours per week for a minimum of six (6) consecutive months.

~~(d)~~(f) In order to earn credit in category LA-4, an Applicant must teach subjects that are directly related to the practice of landscape architecture. **An Applicant** may earn one year of credit by teaching for twenty (20) semester credit hours or thirty (30) quarter credit hours.

~~(e)~~(g) An Applicant may not earn credit for experience gained prior to the date the Applicant completed the educational requirements for landscape architectural registration by examination in Texas.

Agenda Item 12
Discussion of Continuing Education Disciplinary Issue: Lost/Stolen/Destroyed C.E. Certificates

Issue:

How should the Board treat cases in which the registrant claims loss or destruction of supporting documents certifying continuing education program hours (CEPH) completion?

For example, consider a registrant who renews his registration and certifies that he is compliant with CEPH requirements for the previous calendar year. After being selected for audit, the registrant replies that CEPH certification documents have been accidentally destroyed/lost/stolen. This is a situation that comes up often (especially with registrants claiming that documents have been “lost”). The following issues are raised in such cases:

- If the registrant is taken at his word, it is unclear what the disciplinary action should be. An argument could be made that this is unintentional conduct and disciplinary action is unwarranted, but Rule 1.69(g)(1) requires that proof of fulfillment of CEPH requirements be retained for five years. Given the Board’s reliance on document maintenance in the system of CE audits, failure to do so should be grounds for disciplinary action. However, the Board has not adopted a specific administrative penalty to be considered in cases of failure to maintain CEPH documents. One solution to this issue would be for the Board to adopt a specific guideline in Rule 1.232 which sets out a recommended penalty for these cases.
- With respect to what the penalty should be, the Board has set out specific administrative penalties for failure to timely complete required CEPH (\$500) and falsely reporting compliance with mandatory CEPH (\$700). Registrants who do not complete CEPH prior to registration and do not make up CEPH hours in accordance with Rule 1.69(g)(2) are therefore subject to a total penalty of \$1,200. What is the appropriate penalty for failure to maintain records?
 - Note that if Registrants are given a reduced penalty in cases where CEPH documentation is destroyed/lost/stolen, unethical registrants who did not complete CEPH may be motivated to lie to the Board and say that certification has been lost. Undoubtedly, this has occurred in many cases. Should Staff require further proof to support a reduced penalty for failure to maintain CEPH documents, such as a police report, signed affidavit, or detailed description of claimed CEP in the absence of certificates? Alternatively, or in addition, should these registrants be required to “make-up” missing CEPH in order to qualify for any reduced penalty?