

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Board Meeting Agenda

The Centennial Towers

TBAE/TSBPA Board Room, Suite 370

505 E. Huntland Drive

Austin, Texas

Thursday, August 26, 2021

10:00 a.m. – Conclusion

1. **Preliminary Matters**
 - A. Call to order
 - B. Roll call
 - C. Excused and unexcused absences
 - D. Determination of a quorum
 - E. Recognition of guests
 - F. Chair's opening remarks
 - G. Public comments

Debra Dockery
Fernando Trevino
Debra Dockery

2. **Approval of June 22, 2021 Board Meeting Minutes (Action)**

Debra Dockery

3. **Executive Director Report (Information)**

Julie Hildebrand

 - A. Summary of Executive Accomplishments
 - B. Operating Budget/Scholarship Fund: Presentation on 3rd Quarter FY 2021 Expenditures/Revenues

4. **Approval of the FY22 Operating Budget (Action)**

Julie Hildebrand

5. **Board Member Learning and Envisioning (Information)**

Julie Hildebrand

"Communications, Website and Newsletter"

6. **Approval of Rule Review and Readoption of Board Rules**

Lance Brenton

1.21, 1.22, 1.211, 1.212, 1.213, 3.21, and 3.22 (Action)

7. **Consideration of Draft Amendments for Proposal (Action)**

Lance Brenton

Draft amendments to 3.191 relating to the experience requirement for landscape architectural registration by examination, incorporating directives from the Regulatory Compliance Division of the Office of the Governor.

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10:00 a.m. – Conclusion

8. **Enforcement Cases** (*Action*) Lance Brenton
Review and possibly adopt ED’s recommendation in the following enforcement cases:
- A. Registrant/Non-Registrant Cases:**
- | | | |
|------------------|--------------------------|-------------|
| Case No.159-21A | Contros, Christina Marie | Arch #14644 |
| Case No. 137-21I | Kelsey, Rachel Rae | RID #12085 |
- The Board may meet in closed session pursuant to TEX. GOV’T CODE ANN. §551.071(1) to confer with legal counsel.*
9. **Executive Director Annual Performance Evaluation** (*Action*) Debra Dockery
- A. Report on findings based upon performance evaluation.
B. Consider and possibly act upon any personnel action that may be proposed by the Board.
- The Board may meet in closed session pursuant to TEX. GOV’T CODE ANN. §551.074 to confer on personnel matters.*
10. **Resolution Honoring Corbett “Chase” Bearden** (*Action*) Debra Dockery
11. **Approval of the Proposed 2022 Board Meeting Dates** (*Action*) Debra Dockery
- Thursday, February 24, 2022
Thursday, May 26, 2022
Thursday, August 25, 2022
Thursday, November 17, 2022
12. **Reports on National Regulatory Boards and Board Member and Staff Committee Service** (*Information*) Debra Dockery
13. **Report on Conferences and Meetings** (*Information*) Debra Dockery
- A. NCARB Annual Business Meeting – June 23-25
B. NCARB Licensing Advisory Summit – Aug 5-7
C. ASID Texas 2021 Celebrating Design Texas: Education, Expo & Awards – Aug 12-13

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10:00 a.m. – Conclusion

14. **Report on Upcoming Conferences and Meetings** (*Information*) Debra Dockery
- A. 2021 LRGV-AIA Conference – Sep 10-12
 - B. CLARB Annual Meeting – Sep 22-24
 - C. FARB: 2021 FARB Regulatory Law Seminar – Sep 30 – Oct 3
 - D. TxA Annual Conference & Expo – Oct 7-9
15. **Board Member Comments/Future Agenda Items** (*Information*) Debra Dockery
16. **Upcoming Board Meeting** (*Information*) Debra Dockery
Tuesday, November 16, 2021
17. **Adjournment** Debra Dockery

NOTE: *Items may not necessarily be considered in the order they appear on the agenda.*

- ◆ *Executive session for advice of counsel may be called regarding any agenda item under the Open Meetings Act, Government Code §551.*
- ◆ *Action may be taken on any agenda item.*

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services are required to call (512) 305-8548 at least five (5) workdays prior to the meeting so that appropriate arrangements can be made.

FREQUENTLY USED ACRONYMS

ACSA	Association of Collegiate Schools of Architecture
ADA	Americans with Disabilities Act
AIA	American Institute of Architects
AREFAF	Architect Registration Examination Financial Assistance Fund (Scholarship)
ASID	American Society of Interior Designers
ASLA	American Society of Landscape Architects
ARE	Architect Registration Examination
AXP	Architectural Experience Program
BOAT	Building Officials Association of Texas
CACB	Canadian Architectural Certification Board
CIDA	Council for Interior Design Accreditation (Formerly FIDER)
CIDQ	Council for Interior Design Qualification
CLARB	Council of Landscape Architectural Registration Boards
GAA	General Appropriations Act
GRF	General Revenue Fund
IDCEC	International Design Continuing Education Council
IDEC	Interior Design Educators Council
IIDA	International Interior Design Association
LARE	Landscape Architect Registration Examination
MBA	Member Board Administrator (within NCARB)
NAAB	National Architectural Accrediting Board
NCARB	National Council of Architectural Registration Boards
NCEES	National Council of Examiners for Engineering and Surveying
OAG	Office of the Attorney General
SOAH	State Office of Administrative Hearings
SORM	State Office of Risk Management
TAID	Texas Association for Interior Design
TAS	Texas Accessibility Standards
TASB	Texas Association of School Boards
TBPELS	Texas Board of Professional Engineers and Land Surveyors
TxA	Texas Society of Architects
TSPE	Texas Society of Professional Engineers

TEXAS BOARD OF ARCHITECTURAL EXAMINERS
Minutes of June 22, 2021 Board Meeting
Centennial Building, 505 E. Huntland Dr., Ste. 350
Austin, TX 78752
10:00 a.m. until completion of business

AGENDA ITEMS	DESCRIPTIONS																		
1A. Call to Order	Ms. Dockery called the meeting to order at 10:00 a.m.																		
1B. Roll Call	<p>Mr. Trevino called the roll.</p> <p><u>Present Board Members</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Debra Dockery</td> <td style="width: 50%;">Chair, Architect Member</td> </tr> <tr> <td>Robert (Bob) Wetmore</td> <td>Vice-Chair, Architect Member</td> </tr> <tr> <td>Jennifer Walker</td> <td>Architect Member</td> </tr> <tr> <td>Rosa Salazar</td> <td>Registered Interior Designer</td> </tr> <tr> <td>Chase Bearden</td> <td>Public Member</td> </tr> <tr> <td>Fernando Trevino</td> <td>Public Member</td> </tr> <tr> <td>Joyce Smith</td> <td>Public Member</td> </tr> <tr> <td>Darren James</td> <td>Architect Member</td> </tr> <tr> <td>Tim Bargainer</td> <td>Landscape Architect Member</td> </tr> </table>	Debra Dockery	Chair, Architect Member	Robert (Bob) Wetmore	Vice-Chair, Architect Member	Jennifer Walker	Architect Member	Rosa Salazar	Registered Interior Designer	Chase Bearden	Public Member	Fernando Trevino	Public Member	Joyce Smith	Public Member	Darren James	Architect Member	Tim Bargainer	Landscape Architect Member
Debra Dockery	Chair, Architect Member																		
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Chase Bearden	Public Member																		
Fernando Trevino	Public Member																		
Joyce Smith	Public Member																		
Darren James	Architect Member																		
Tim Bargainer	Landscape Architect Member																		
1C. Excused and Unexcused Absences	None.																		
1D. Determination of a Quorum	A quorum was present.																		
1E. Recognition of Guests	Ms. Dockery acknowledged the following members of TBAE staff and guests in the audience: Julie Hildebrand, Executive Director; Lance Brenton, General Counsel; Dale Dornfeld, IT Manager; Donna Vining, Executive Director for Texas Association for Interior Design (TAID); Jeri Morey, architect; and Chris Smith, Representative from Governor Abbott’s office.																		
1F. Chair’s Opening Remarks	<p>Ms. Dockery thanked the Board and welcomed the audience. She stated that, to enable social distancing, the remainder of staff is not attending the meeting, but they are in the office if needed.</p> <p>In her opening remarks, Ms. Dockery stated that she had recently been reminiscing with her staff and describing her experiences in the architectural profession as a young intern. She described her days working in a drafting room, which included many four poster desks lined up with a head draftsman at the front of the room. The air was filled with cigarette</p>																		

	<p>smoke, and the work was highly regimented – everybody showed up at 8, took 15 minutes at 10 and otherwise worked really long hours. She had been thinking about these experiences in the context of our eyes being opened in the recent past to different ways of doing business, of how we can communicate and work efficiently without being watched by the head draftsman at the front of the room. She noted that the Board would be receiving information today regarding the concerning rates of attrition for women and minorities in dropping out of the professions. She said she hoped that was an opportunity for the professions and the Board to look at the issue and help to make the professions more accessible and family friendly.</p>
<p>1G. Public Comments</p>	<p>Jeri Morey thanked Ms. Dockery for her comments about building codes at the last Board meeting. Ms. Morey provided information regarding performance-based design, which she said is a process that fire-protection engineers developed that involves computer modeling of both fire and means of egress. Ms. Morey discussed a recent program on performance-based design at the Texas Fire Protection Association meeting. She notified the Board of an upcoming presentation on the same topic at the Building Communities Conference in South Padre Island on September 10-11, 2021, which is sponsored by AIA Lower Rio Grande Valley. She encouraged the Board members to attend this presentation.</p> <p>Additionally, Ms. Morey suggested the Board should look at the rule relating an architect’s requirement to report an owner and/or contractor who violates the law contrary to an architect’s advice and to provide a timeline in which an architect is required to make such a report, or a similar report regarding an architect who has engaged in a code violation.</p>
<p>2. Approval of February 25, 2021 Board Meeting Minutes</p>	<p>A MOTION WAS MADE AND SECONDED (Bearden/James) TO APPROVE THE FEBRUARY 25, 2021 BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.</p>
<p>3. Executive Director’s Report A. Summary of Executive Accomplishments</p>	<p>Ms. Dockery invited Ms. Hildebrand to deliver the Executive Director’s report.</p> <p>Ms. Hildebrand discussed the information contained in the Executive Director’s report beginning on page 20 of the Board materials and referred the Board to those materials as a supplement to her verbal presentation. Ms. Hildebrand devoted particular attention to her assistance in developing the FARB Regulatory Law Seminar. Within that role, she has arranged for participation by representatives of the governor’s office, who will discuss the Board’s recent submission of rules to the office for antitrust review. As these types of processes become more prevalent, this will be an informative topic for attendees, many of whom work for regulatory Boards governing a number of different professions around the country.</p>

<p>B. Operating Budget/Scholarship Fund: Presentation on 3rd Quarter Fiscal Year 2021 Expenditures/Revenue</p>	<p>Ms. Hildebrand also discussed the development of a pilot project to consider the implementation of part-time work from home on a permanent basis.</p> <p>Ms. Hildebrand discussed the registration and enforcement reports on pages 22 and 23. She discussed the scholarship report on page 25 and said the newsletter would include an article about the scholarship to encourage interest. She provided information on eligibility for the scholarship following a question from Ms. Smith.</p> <p>Ms. Dockery related conversations she has had with young professionals and said the fear of failure may be holding people back from continuing the testing process.</p> <p>Mr. James noted that, as a young professional, he generally did not read industry or Board newsletters. He suggested that information about the scholarship be distributed through the universities and local AIAs.</p> <p>Ms. Dockery also suggested that applicants for registration be notified of the scholarship early in the application process.</p> <p>Ms. Hildebrand referred the Board to the budget on page 24 and updated the Board on the agency’s financial condition. She expected that the agency would come in ahead of budget, which was a welcome development considering a difficult year for everyone.</p> <p>Mr. Bearden noted TBAE’s strength in employee retention and referred to the fact that many employees may be nearing retirement age. He asked whether work from home would have any impact on retaining those employees, since this institutional knowledge is such a valuable asset for the agency.</p> <p>Ms. Hildebrand agreed with Mr. Bearden’s assessment of agency value, and said she was hopeful that the program would have a positive impact in this area.</p>
<p>4. Proposed Amendments to FY21 Operating Budget</p>	<p>Ms. Hildebrand referred the Board to page 26 for the proposed amendments to the FY21 budget. The need to develop an amended budget was identified at the previous Board meeting, due to unexpectedly high SWCAP payments and other expenses. She explained that, since those items were being amended, she took the opportunity to update other items in the budget as well. Ms. Hildebrand discussed the amended budget figures, including an increased revenue estimate. She also provided information to the Board regarding the SWCAP payment.</p> <p>Mr. Bearden asked whether there was enough money budgeted for cyber security.</p>

	<p>Ms. Hildebrand stated that additional money had been devoted to cybersecurity purchases in FY21, and that she originally anticipated those would be one-time expenses. However, she had decided to keep that figure the same for FY 2022, to continue to strengthen the agency’s defenses. Those expenditures would be intended to respond to issues identified in a recent audit of the agency’s defenses, as well as recommendations by the agency’s information security officer.</p> <p>A MOTION WAS MADE AND SECONDED (Bargainer/Smith) TO APPROVE THE AMENDED 2021 BUDGET. THE MOTION PASSED UNANIMOUSLY.</p>
<p>5. Proposed FY22 Operating Budget Discussion</p>	<p>Ms. Hildebrand referred the Board to page 27 for the proposed FY22 budget. She explained that the budget was only a draft and offered for information purposes only. She requested feedback from the Board on whether the budget committee should meet to consider the budget. She explained her thoughts in developing the budget and discussed various budget figures. Ms. Hildebrand also discussed the fund balance projections on page 28, as well as the agency policy for fund balance, which requires an 8-month reserve.</p> <p>Ms. Smith inquired about how the agency had grown its fund balance through history.</p> <p>Ms. Hildebrand stated that the agency’s fees at the beginning of the SDSI period were high enough to exceed the needs of the agency. She also noted that the agency had not grown its workforce, and had actually cut positions, which resulted in relatively lower payroll expenses than what would have otherwise been observed. She noted the long period of economic growth in Texas, which resulted in sustained budgetary surpluses due to higher-than-expected registration numbers. Finally, she noted that the agency previously kept its administrative penalties, which is no longer true. Because that revenue stream is no longer present, the fund balance has not grown as quickly as it did in the beginning.</p> <p>Ms. Dockery thanked Ms. Hildebrand for her work on the proposed budget. She determined that a meeting of the budget committee was not necessary and looked forward to approving the final budget in August.</p>
<p>6. Discussion of ARE Passage Rates</p>	<p>Ms. Hildebrand referred the Board to page 29 of the Board notebook, which contained a chart tracking ARE passage rates, nationally and in Texas, since 2004. The Board had a lengthy discussion regarding the ARE and the continued decline in pass rates. Ms. Hildebrand discussed historical changes to the exam and noted that passage rates had dropped significantly over time, especially when changes to the exam format had occurred. Most recently, a substantial drop in passage rates was observed following the adoption of ARE 5.0. She shared her concern about this development and stated that she had requested more information from NCARB and begun discussing the issue with NCARB pursuant to those</p>

inquiries. She said discussions of the issue had occurred at regional meetings as well. She stated that she was still in the processing of trying to understand more about why this was happening and was therefore not yet at the stage of developing a solution. She invited the Board's input, and stated that her recommendation, subject to the Board's input, was to develop a letter to Region 3 to see whether other states had similar concerns and if so, develop a plan to address the issue. Alternatively, she suggested a letter could be written to NCARB to request information about what was happening and what could be done to address it. Other alternatives included convening a committee to look at the issue in depth or hiring an expert to look at the exam. Finally, she requested input from the Board on whether they needed any additional information to help them in responding to the issue.

Ms. Dockery said she had looked at data going back to the 1970s and reported that the pass rate since then consistently stayed in the 70s. Anytime a new iteration came online, there would be a drop in pass rates for a year or two and then a reversion to previous levels. She expressed concern that with ARE 5.0, that reversion was not occurring. She stated that NCARB had been a little bit dismissive of the drop in pass rates when she had addressed the issue. She said NCARB referred, in part, to pass rates in the 50s for certain other professions. In addressing this point, Ms. Dockery stated that pass rates were not that low for engineering and other professions. Ms. Dockery noted that pass rates were lower for women, minorities, and Texas applicants. With respect to Texas applicants, she noted that they did relatively well on topics such as practice management and project management, two areas that an applicant may learn more about in an internship. She suggested lower pass rates on other tests could indicate that some Texas architecture schools may not be adequately preparing students to successfully enter the profession. Ms. Dockery also noted the Texas does relatively well compared to other large states.

Mr. Wetmore asked whether passage rates could be broken down by educational program.

Ms. Dockery stated that Rice was up near the national average, followed by UT, A&M, and Texas Tech. She said it then dropped off with UTSA, UT Arlington, UH, and Prairie View A&M.

Mr. Bearden asked when the test evolved to testing centers on computers.

Ms. Dockery said it started with ARE 3.0.

Mr. Wetmore recalled that the Austin Women in Architecture study series had been the best prep program while he was preparing for the ARE. He suggested the Board could work with local professional groups and AIA chapters to develop similar programs.

	<p>Mr. James noted the importance of efforts by NOMA and WIA to bring more people of color and women into the profession, especially in light of the pass rates at Prairie View A&M.</p> <p>Ms. Hildebrand stated that continued dialogue with NCARB would be important. She expressed her hope that NCARB recognized the issue and would be working toward a solution but emphasized the importance of the Board in encouraging improvement.</p> <p>Ms. Vining stressed the importance of psychometrics in developing testing standards and said the Board was right to be concerned about the drop in pass rates. Ms. Hildebrand noted that the ARE had been subjected to analysis by psychometricians but reiterated the concern about pass rates.</p> <p>Mr. Bearden contrasted minimum standards with best practices and noted that just because a test is psychometrically valid, doesn't mean it is the best test possible. With the recent expiration of his term Mr. Bearden acknowledged the expected end of his tenure, but encouraged the Board to work toward an ARE that was as best as possible, not just minimally acceptable.</p> <p>Ms. Dockery asked Ms. Hildebrand to forward NCARB's most recent email about pass rates to the Board.</p> <p>Ms. Salazar asked how the architecture pass rates compared to other professions.</p> <p>Ms. Smith said that CPAs have a 45-50% pass rate. She said this was an improvement versus the past, when only 3% would pass all four parts during the first attempt. However, she noted that the 45-50% pass rate was below the norm for other professions.</p> <p>Ms. Dockery referred to controversy about examinees no longer being able to use scratch paper on the exam. She took the practice exam with the digital white board and did not find it to be a problem.</p> <p>Mr. Bearden directed a question to the firm owners – is it helpful and advantageous for the examinees to become licensed sooner?</p> <p>Ms. Dockery stated that it was advantageous to have more licensed architects on staff. Mr. James said his firm encourages employees to become registered as soon as possible. Mr. Wetmore agreed.</p>
<p>7. Board Member Learning and Envisioning –</p>	<p>Ms. Hildebrand referred the Board to the report on page 30 and invited any questions from the Board regarding the finance department and its duties.</p> <p>Ms. Smith commented that Mr. Liles did an excellent job preparing the report, which was a good reference document.</p>

<p>Budgeting and Fund Balance</p>	
	<p>The Board took a break at 11:20 am and reconvened at 11:30 am.</p>
<p>8. Approval of Rule Review and Readoption of Rules for Chapters 1, 3, 5, and 7 of the Board’s Rules</p>	<p>Mr. Brenton referred the Board to the summary for this agenda item, which began on page 34. He summarized those materials, provided staff’s recommendation, and invited any questions or comments from the Board.</p> <p>A MOTION WAS MADE AND SECONDED (Bargainer/Wetmore) TO MOVE TO READOPT ALL RULES IN 22 TEX. ADMIN. CODE CHAPTERS 1, 3, 5, AND 7 OTHER THAN 22 TEX. ADMIN. CODE §§ 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, AND 3.191, AS AUTHORIZED UNDER TEXAS GOVERNMENT CODE §2001.039(C).</p> <p>The motion passed unanimously.</p>
<p>9. Enforcement Cases Review and possibly adopt ED’s recommendation in the following cases</p> <p>9A. Registrant/Non-Registrant Cases</p>	<p>Ms. Dockery asked Mr. Brenton to present the first case.</p> <p>Lurie, Scott F. (#171-20A) Mr. Brenton directed the Board to the written materials for this case beginning on page 35 and provided a summary of the case as well as staff’s recommendation.</p> <p>A MOTION WAS MADE AND SECONDED (Bearden/Smith) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTY OF \$3,000 AS SET FORTH IN THE REPORT AND NOTICE OF VIOLATION DATED MAY 13, 2021. THE MOTION PASSED UNANIMOUSLY.</p> <p>Stillson, Elisabeth Louise (#228-19A) Mr. Brenton directed the Board to the written materials for this case on pages 36 through page 43 and provided a summary of the case as well as staff’s recommendation.</p> <p>A MOTION WAS MADE AND SECONDED (James/Walker) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE VOLUNTARY SURRENDER OF MS. STILLSON’S REGISTRATION. THE MOTION PASSED UNANIMOUSLY.</p> <p>Tabrizi, Massoud (#255-19E) Mr. Brenton directed the Board to the written materials for this case beginning on page 44 and provided a summary of the case as well as staff’s recommendation.</p> <p>A MOTION WAS MADE AND SECONDED (James/Bargainer) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW,</p>

	<p>AND ADMINISTRATIVE PENALTY OF \$3,000 AS SET FORTH IN THE REPORT AND NOTICE OF VIOLATION DATED MAY 13, 2021.</p> <p>Ms. Walker asked whether the Engineers Board was aware of this matter and Mr. Brenton replied that they were.</p> <p>The Board took the final vote on the motion. THE MOTION PASSED UNANIMOUSLY.</p> <p>Thompson, Sterling Wayne (#050-21A) Mr. Brenton directed the Board to the written materials for this case on page 46 and provided a summary of the case as well as staff’s recommendation.</p> <p>A MOTION WAS MADE AND SECONDED (Bearden/Bargainer) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTY OF \$1,000 AS SET FORTH IN THE REPORT AND NOTICE OF VIOLATION DATED MARCH 17, 2021. THE MOTION PASSED UNANIMOUSLY.</p> <p>Whitwell, Allen H. (#256-19A) Mr. Brenton directed the Board to the written materials for this case on pages 47 through page 60 and provided a summary of the case as well as staff’s recommendation.</p> <p>A MOTION WAS MADE AND SECONDED (Bearden/Wetmore) TO ENTER THE ATTACHED AGREED ORDER DATED MAY 5, 2021, INCLUDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTY OF \$15,000 AND PROBATED SUSPENSION FOR THREE YEARS.</p> <p>Mr. Bearden asked whether anyone had followed up on the projects that were never submitted for accessibility review.</p> <p>Mr. Brenton noted that a few of the projects had not been built but stated that he would reach out to the owners of buildings where work had been completed and notify them of the possibility of accessibility deficits.</p> <p>The Board took a final vote on the case. THE MOTION PASSED UNANIMOUSLY.</p>
<p>9B. Continuing Education Cases:</p>	<p>Alford, Gordon B. (#159-20I) Barker, Jena K. (#114-21I) Fry, Casey (#136-21I) Harris, Robert Mark (#111-21A) Haggard, Jud Ross (#072-21A) Mattocks, Todd W. (#109-21A) Pickel, James R. (#139-21L)</p>

	<p>Ms. Dockery asked whether there were any recusals that need to be made and there were none.</p> <p>A MOTION WAS MADE AND SECONDED (Bearden/Bargainer) TO ACCEPT STAFF'S RECOMMENDATIONS IN THE ABOVE-REFERENCED CONTINUING EDUCATION CASES. THE MOTION PASSED UNANIMOUSLY.</p>
<p>10. NCARB FY21 Resolutions to be Acted Upon at the 2021 Annual Business Meeting</p>	<p>Ms. Dockery directed the Board to the materials beginning on page 68 and discussed the resolutions to be acted upon on the 2021 Annual Business meeting. She asked the Board for any input they might have regarding support or opposition to the resolutions. She stated that Joyce Smith and Julie Hildebrand would be attending this meeting virtually as well as herself.</p> <p>Ms. Dockery summarized the resolutions for the Board and explained that she would carry out the vote on the Board's behalf at the meeting.</p>
<p>11. Executive Director Annual Performance Evaluation Discussion</p>	<p>Ms. Dockery explained that the Board would conduct its annual review of the Executive Director at the August meeting and that she would be sending out forms to be completed by Board members in July.</p>
<p>12. Legislative Committee Update</p>	<p>Ms. Hildebrand referred the Board to the report on page 253 and summarized the bills therein as well as planned rulemaking actions to implement the laws.</p>
<p>13. Reports on National Regulatory Boards and Board Member and Staff Committee Service</p>	<p>Ms. Smith reported that she served on the Interiors Task Force and that they met all charges for the year, including the completion of a study in cooperation with CIDQ. Ultimately, the Task Force concluded that the two professions have their own competencies and should continue to coexist. She stated that the Task Force would be wrapping up business and that subsequent cooperation with CIDQ would occur on the Board level rather than committee level. Ms. Smith stated that she would now move on to the NCARB Professional Conduct Committee.</p> <p>Ms. Salazar provided an update on her service with the CIDQ ACE Task Force. She said the Task Force would be recommending that the program be continued but reorganized in a way to make it more accessible to more people.</p> <p>Ms. Hildebrand stated that she would be serving on the Incidental Practice Task Force at NCARB, which completed charges for last year but had received new charges.</p> <p>Ms. Dockery reported that she had been reappointed to the CART Committee, which conducts portfolio review for individuals who are seeking NCARB certification without a professional degree. She discussed that process and encouraged people to take advantage of that pathway to reciprocity.</p>

	<p>Ms. Dockery also stated that she would continue to serve on the Responsible Control Task Force at NCARB. She said the task force had not come close to meeting its charges during the past year, due to the challenges and diverging opinions on the issue. She discussed those challenges and said they would have their work cut out for them moving forward.</p>
<p>14. Report on Conferences and Meetings A. NCARB Regional Summit/MBE Workshop – Mar 4 B. ASLA Conference – April 28-30 C. NCARB Special Meeting – May 12-14</p>	<p>Mr. James attended the NCARB Regional Summit and said it was interesting to hear about issues that were specific to individual regions and jurisdictions. Ms. Dockery shared her perspective on the debate regarding the NCARB Board of Directors. She noted that a resolution to eliminate two executive officer positions on the Board, to make room for two at-large positions, had been defeated.</p> <p>Ms. Hildebrand stated that Jack Stamps and Mike Alvarado attended and made a presentation at the ASLA Conference in Galveston. She and Mr. Bargainer attended the conference as well.</p>
<p>15. Report on Upcoming Conferences and Meetings A. NCARB Annual Business Meeting – June 23-25 B. NCARB Licensing Advisory Summit – Aug 4-7</p>	<p>Ms. Dockery stated that the NCARB Annual Business Meeting would be a hybrid meeting this year – both virtual and in-person.</p> <p>Ms. Hildebrand explained that Mike Alvarado and two registration staff members would attend the NCARB Licensing Advisory Summit in August.</p> <p>Ms. Salazar mentioned that CIDQ was planning on having an in-person annual meeting this year.</p>
<p>16. Board Member Comments/Future Agenda Items</p>	<p>Ms. Dockery asked if the Board members had any comments or suggestions on future agenda items. No suggestions were received.</p>
<p>17. Upcoming Board Meetings</p>	<p>Ms. Dockery stated that the remaining board meetings for 2021 are scheduled for Thursday, August 26th and Tuesday, November 16th.</p>
<p>18. Adjournment</p>	<p>THE MEETING ADJOURNED AT 12:34 PM.</p>

APPROVED BY THE BOARD:

DEBRA J. DOCKERY, FAIA
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS

TBAE Staff Accomplishments: August 2021 Board Meeting

June

- CLARB Board of Directors Meeting
- FARB Regulatory Law Seminar Design Team Meeting
- Advanced Administrative Law Conference
- CLARB Model Law Review
- TBAE Board Meeting
- CLARB Leadership Advisory Council Meeting
- NCARB Annual Business Meeting
- Regulatory Implications of North Carolina State Board of Dental Examiners v. FTC
- Personal Financial Statement Filing
- Texas Information Sharing and Analysis Organization Meeting - IS
- Continue Work from Home - Voluntary Return to Office, 75% Cap
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings

July

- CIDQ Quarterly Advocacy Webinar: Legislative Recap
- CLARB 101
- Preventing and Recovering from Ransomware and Other Destructive Cyber Events - IS
- CLARB Regulation 101 Presentation
- CLARB Leadership Advisory Council Diversity, Equity, and Inclusion Learning
- Public Cloud Security Training - IS
- CLARB Landscape Architect Practice 101
- Hybrid Telework Pilot Project Began
- Emergency Work from Home - Hybrid Return to Office, 50% Cap
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings

August

- Meeting with Jennifer Briggs, Executive Vice President, Texas Society of Architects
- FARB Regulatory Law Seminar Design Team Meeting
- NCARB Licensing Advisors Summit
- STG Design Presentation - Enforcement and Glenn
- Texas ASID Summer Conference Presentation
- CLARB Regional Meeting
- NCARB Incidental Practice Task Force Meeting
- TBAE Board Meeting
- Emergency Work from Home - Hybrid Return to Office, 50% Cap
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings

September

- CLARB Annual Meeting
- FARB Regulatory Law Seminar

October

- TxA Annual Meeting
- NCARB Incidental Practice Task Force Meeting

November

- CIDQ Annual Conference
- TBAE Board Meeting

December

- NCARB Committee Summit
- CLARB Board of Directors' Meeting

Applicants		New Registrants		Registrants (active)		The Rest	
1072 Fiscal Year to Date	+157 (915) Year-over-Year	853 FYTD	+111 (742) YOY	19723 As of month ended	+280 (19443) YOY	A survey of the Registration Division's additional accomplishments and activities	
By-examination applications received FYTD, by profession: Architect: 351 RID: 61 LA: 139 Subtotal: 551		By-examination registrations issued FYTD, by profession: Architect: 244 RID: 44 LA: 128 Subtotal: 416		Architects Resident: 8706 Nonresident: 5225 Subtotal: 13931		2762 exam results received FYTD 2498 Arch 0 RID 264 LA	
Reciprocal applications received FYTD, by profession: Architect: 458 RID: 6 LA: 57 Subtotal: 521		Reciprocal registrations issued FYTD, by profession: Architect: 379 RID: 2 LA: 56 Subtotal: 437		RIDs Resident: 3761 Nonresident: 265 Subtotal: 4026		787 Continuing Education audits conducted FYTD	16 referred to Investigations FYTD
<h1>About this report</h1> <p>FYTD: Fiscal Year to Date. Compares current data to that of the beginning of the current fiscal year.</p> <p>YOY: Year-over-Year. Compares current data to that of 12 months prior.</p>				Landscape Architects Resident: 1240 Nonresident: 526 Subtotal: 1766		8 scholarship applications approved FYTD	
				All registrants Resident: 13707 Nonresident: 6016 Total: 19723		146 Certificates of Standing issued FYTD	

Cases Opened		Cases Dismissed		Days to Investigate a Case		Cases Resolved (as of month ended)	
208 Fiscal Year to Date		121 FYTD		63 July, 2021		71	
+31 Year-over-Year		+22 YOY		64 FY Average to Date		41 Warning(s) by Executive Director	0 Voluntary Surrender(s)
67 Case(s) referred to Legal		Dismissal details TDLR: 118 Other: 3* <small>*e.g. No evidence; not a violation.</small>		Context Typical target: 115-330 (2018-19) SDSI avg. actual: 110 (2018)		29 Disciplinary Action(s) by Board	37 *Notice(s) of Violation
						1 *Complaint(s) Filed at SOAH	0 *Informal Conference(s)

*Matters are ongoing and not yet resolved

Customer Service		Newsletter		Employee Engagement		Contact volume (to front desk alone)	
22,915 Customers surveyed		1,234 Responses		439 Most recent score (2020)		3452 Calls (FYTD)	
85% Read at least half (2018)		21,000+ Recipients		419 Avg. score since 2010		1085 Emails (FYTD)	
94% Customer satisfaction (2020)		"Disciplinary Actions" Most-read topic (2018)		Strengths: Strategic Workplace Supervision	Weaknesses: Pay Benefits Development	Avg. monthly calls FYTD: 314	Avg. monthly emails FYTD: 99

**Texas Board of Architectural Examiners
Actual 2021 Budget**

	FY 2021 Approved Budget	FY 2021 Expenditures as of 5-31-21	FY 2021 Percentage Earned/Spent
Revenues:			
Licenses & Fees	\$ 2,823,345	\$ 2,132,797	75.54%
Business Registration Fees	\$ 148,468	\$ 115,808	78.00%
Late Fee Payments	\$ 142,984	\$ 113,591	79.44%
Other	\$ 2,500	\$ 4,744	189.74%
Interest	\$ -	\$ 501	
Potential Draw on Fund Balance	\$ 43,032		
Total Revenues	\$ 3,160,329	\$ 2,367,440	74.91%
Expenditures:			
Salaries and Wages	\$ 1,688,262	\$ 1,263,520	74.84%
Payroll Related Costs	\$ 584,067	\$ 431,845	73.94%
Professional Fees & Services	\$ 30,000	\$ 8,183	27.28%
Travel			
Board Travel	\$ 18,000	\$ -	0.00%
Staff Travel	\$ 15,000	\$ 2,394	15.96%
Office Supplies	\$ 9,000	\$ 3,134	34.82%
Postage	\$ 7,000	\$ 5,695	81.36%
Communication and Utilities	\$ 23,000	\$ 22,788	99.08%
Repairs and Maintenance	\$ 1,000	\$ -	0.00%
SWCAP Payment with Office Rental	\$ 127,000	\$ 142,345	112.08%
Equipment Leases--Copiers	\$ 7,000	\$ 4,930	70.44%
Printing	\$ 6,000	\$ 3,114	51.90%
Operating Expenditures	\$ 28,000	\$ 18,522	66.15%
Registration Fees--Employee Training	\$ 10,000	\$ 8,502	85.02%
Membership Dues	\$ 21,000	\$ 13,435	63.98%
Payment to GR	\$ 510,000	\$ 382,500	75.00%
IT Upgrades	\$ 48,000	\$ 26,180	54.54%
Information Security	\$ 28,000	\$ 7,163	25.58%
Total Expenditures	\$ 3,160,329	\$ 2,344,250	74.18%
Excess/ (Deficiency) of Rev over Exp.	-	\$ 23,190	0.73%

	\$ 3,125,666
Funding for 8 months	\$ 2,106,675
Excess Fund Balance	\$ 994,904
Total Fund Balance	\$ 3,101,579

Administrative Penalties Collected \$ 85,580.53

General Revenue Collected \$ -

**Texas Board of Architectural Examiners
Fiscal Year 2021 Budget
Scholarship Fund**

	FY 2021 Budget	FY 2021 Actual Sept. 1, 2020--May 31, 2021
Operating Fund Beginning Fund Balance:	-	-
Adjusted Beginning Balance	-	-
Scholarship Fund Beginning Balance	\$ 78,974.29	
Total Beginning Scholarship Fund Balance	\$ 78,974.29	\$ 78,974.29
Revenues:		
Scholarship Fees	-	\$ 2,205.00
Total Revenues	-	\$ 2,205.00
Expenditures:		
Operating Expenditures-Scholarship Payments		\$ 4,000.00
Total Expenditures		\$ 4,000.00
Excess/(Deficiency) of Rev. over Exp.	\$ 78,974.29	\$ 77,179.29
Fund Balance	\$ 78,974.29	\$ 77,179.29

Number of Scholarships Awarded

8

Frequency per Fiscal Year----September 30, January 31, and May 31

**Texas Board of Architectural Examiners
Proposed Fiscal Year 2022 Budget**

	FY 2021 Amended Budget	FY 2021 Projected through 8/31/21	FY 2022 Proposed Budget
Revenues:			
Licenses & Fees	\$ 2,885,390	\$ 2,915,555	\$ 2,915,555
Business Registration Fees	\$ 154,411	\$ 159,368	\$ 159,368
Late Fee Payments	\$ 151,455	\$ 153,873	\$ 153,873
Other	\$ 4,744	\$ 5,297	\$ -
Interest	\$ 501	\$ 559	\$ -
Potential Draw on Fund Balance	\$ 30,828		\$ 99,703
Total Revenues	\$ 3,227,329	\$ 3,234,652	\$ 3,328,499
Expenditures:			
Salaries and Wages	\$ 1,688,262	\$ 1,680,342	\$ 1,738,910
Payroll Related Costs	\$ 584,067	\$ 577,331	\$ 601,589
Professional Fees & Services	\$ 30,000	\$ 18,483	\$ 30,000
Travel			
Board Travel	\$ 12,000	\$ 8,000	\$ 24,000
Staff Travel	\$ 10,000	\$ 8,000	\$ 20,000
Office Supplies	\$ 9,000	\$ 9,000	\$ 9,000
Postage	\$ 8,000	\$ 7,000	\$ 7,000
Communication and Utilities	\$ 31,000	\$ 30,034	\$ 31,000
Repairs and Maintenance	\$ 1,000	\$ 1,000	\$ 1,000
SWCAP Payment with Office Rental	\$ 198,000	\$ 198,000	\$ 202,000
Equipment Leases--Copiers	\$ 7,000	\$ 6,421	\$ 7,000
Printing	\$ 5,000	\$ 4,910	\$ 5,000
Operating Expenditures	\$ 28,000	\$ 25,000	\$ 28,000
Registration Fees--Employee Training	\$ 10,000	\$ 9,000	\$ 10,000
Membership Dues	\$ 20,000	\$ 15,160	\$ 16,000
Payment to GR	\$ 510,000	\$ 510,000	\$ 510,000
Information Technology	\$ 48,000	\$ 48,000	\$ 60,000
Information Security	\$ 28,000	\$ 28,000	\$ 28,000
Total Expenditures	\$ 3,227,329	\$ 3,183,681	\$ 3,328,499
Excess/ (Deficiency) of Rev over Exp.	\$ -	\$ 50,971	\$ -

TBAE Communications

Roles, responsibilities, and plans for the future

Agenda

- What TBAE Comms does
- What Comms plans to do
- Feedback, suggestions, direction from the Board

TBAE Communications: Roles & responsibilities

- Traditional Comms
 - Newsletter (more on this later)
 - Outreach/presentations
 - Liaison to professional societies
 - Press/media

Licensing News

- Generally two issues a year
- Includes Disciplinary Actions, required by law and the most popular section
- Typically around 4,000 words per issue

Outreach

- About 250 discrete presentations/classes given since 2008
- More than 12,000 “impressions” in same time frame

Outreach

- Audiences have included:
 - Registrants
 - Candidates
 - Building officials
 - School board members
 - Students of all three professions

Outreach

- Notably,
 - even before COVID-19, increased demand for online presentations, and
 - during COVID-19, we've gotten good at online presentations (more on this later)

Stakeholder liaison

- Point of contact in most interactions with TxA, TAID, and Texas ASLA

Press/media contact

- Media contact is quite rare and usually just involves digging up data or numbers for the reporter

TBAE Communications: Roles & Responsibilities

- Less traditional Comms, AKA “other duties as assigned”
 - Reporting
 - Legislative matters
 - Sunset review liaison/coordinator
 - Special projects

TBAE Communications: Future plans

- Multimedia/social media production
- Rethinking *Licensing News*
- Website redesign

Special-purpose outreach: AREFAF

- Recent efforts regarding the “scholarship”
- (Which we now simply call the ARE Grant)
- A great excuse to jump into YouTube(?)

Licensing News

Does the Board have any comments or suggestions about our newsletter?

TBAE's new site

- [Registrants](#) ▾
- [Apply](#) ▾
- [Laws & Enforcement](#) ▾
- [Consumers](#) ▾
- [About](#) ▾
- [Quick Links](#) ▾



Safeguarding the built environment of Texas since 1937.

We protect the health and safety of everyone who lives, works, and plays in the built environment. Find out who we are and how we do it.

[Learn about TBAE](#)

ABOUT US

News and Announcements

RULE UPDATE

You're about to renew your registration, and you realize you have fewer than 12 hours of CE for the next calendar year. Here's what you do before you renew!

Demonstration

A sneak peek at the future of
TBAE.Texas.gov



TEXAS Board of
Architectural Examiners
Architects ■ Landscape Architects ■ Registered Interior Designers

Review of Agency's Rules and Readoption of

22 Tex. Admin. Code §§ 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22

Background

Under Texas Government Code § 2001.039, each state agency is required to review its rules every four years to determine whether each rule should be re-adopted, amended, or repealed. During this process, the state agency must assess whether the reasons for initially adopting the rules continue to exist. The Board most recently adopted rule reviews in 2017.

Additionally, occupational licensing agencies, including TBAE, are required to submit existing rules that affect market competition for review by the Governor's Regulatory Compliance Division (RCD) during the quadrennial rule review. The RCD was created under new law adopted in 2019, Occupations Code Chapter 57, which implements processes within the governor's office to provide active supervision of regulatory board rules that affect market competition. Under these processes, agencies are required to submit any rule that affects market competition for review by the RCD. For the purposes of Chapter 57, a rule is considered to affect market competition if it would (1) create a barrier to market participation in this state; or (2) result in higher prices or reduced competition for a product or service provided by or to a license holder in this state.

Rule Review

On March 26, 2021, Staff published a notice of intent to review [Chapters 1, 3, 5 and 7 of the agency's rules](#), which invited the public to submit comments or any other responses or suggestions. No comments were received from the public. After a preliminary review of TBAE's rules to determine potential impacts on market competition, staff submitted Board Rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, and 3.191 to the RCD for review.

At the June Board meeting, the Board considered the rule review and readoption of Board rules. However, the RCD review of rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, and 3.191 was ongoing at the time that the June agenda was set. Therefore, the Board did not consider the readoption of rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, and 3.191. All other Board rules were readopted at the June meeting.

On June 16, 2021, the RCD notified the Board of the completion of its review of Board rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, and 3.191. The RCD's reports are attached to this summary. With the exception of Rule 3.191, the RCD determined that the submitted rules are consistent with state policy and may be readopted. Staff has completed its own review of Rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, and 3.22, and it is Staff's opinion that the reasons for the initial adoption of these rules continue to exist, and that the rules should be readopted.

Staff's Recommendations

Move to readopt 22 Tex. Admin. Code §§ 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, and 3.22, as authorized under Texas Government Code §2001.039(c).



GOVERNOR GREG ABBOTT

To: Debra Dockery, Chair
Julie Hildebrand, Executive Director
Lance Brenton, General Counsel
Texas Board of Architectural Examiners

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

Date: June 16, 2021

Subject: Title 22 Texas Administrative Code Sections 1.21 and 1.22 (RCD Rule Review #2021-005)

I. Syllabus

The Texas Board of Architectural Examiners (“board”) filed an intent to review 22 TAC Chapter 1 pursuant to Section 2001.039, Texas Government Code.¹ The board submitted 22 TAC §§1.21 and 1.22, which set forth the requirements for architectural registration by examination and reciprocity, to the Regulatory Compliance Division (“division”) for review on March 26, 2021.² The division invited public comments on the rules for a 30-day period ending April 28, 2021, but received no comments. The division has determined that §§1.21 and 1.22 are consistent with state policy and, thus, the rules are approved for readoption.

II. Analysis

Sections 1051.704 and 1051.705, Texas Occupations Code, create a three-pronged approach to architectural registration by requiring applicants to meet education, experience, and examination prerequisites, which are detailed in §1.21.³ Additionally, Section 1051.305, as reflected in §1.22, allows the board to waive prerequisites for applicants who hold credentials from another jurisdiction with substantially equivalent requirements or with which Texas has a reciprocity agreement. Because registration prerequisites and limitations on reciprocal credentialing may

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

² Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 1 and 5 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ *Id.* at 2.

create barriers to entering the market, the rules affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.⁴

A. The education prerequisite in 22 TAC §1.21(a)(1) is consistent with state policy.

Section 1051.705(a)(1) requires applicants to graduate from a recognized university or college of architecture approved by the board. Section 1.21(a)(1)(A) requires architectural education programs to be accredited by the National Architectural Accrediting Board (“NAAB”). By using a national accrediting body, the board is able to judge programs based on consistent standards, while applicants remain free to choose between programs of varying costs, locations, and reputations without impacting their eligibility for registration in Texas.⁵ Subparagraphs (B) and (C) provide additional flexibility for applicants who attend programs pending accreditation, which expands academic opportunities for students, as well as encourages new programs, while ultimately still holding applicants to the same education standards.⁶

Further, §1.21(a)(1)(D) recognizes a pathway to registration for graduates of programs outside of the United States that NAAB, or another organization acceptable to the board, determines are substantially equivalent to NAAB-accredited programs. NAAB reviews international programs of architecture for comparability and also conducts individual evaluations of applicants’ foreign education, similar to a private credential evaluation organization.⁷ Both accreditation and education evaluation services enable the board to efficiently approve applicants’ architectural education programs as required by Section 1051.705(a)(1). Thus, §1.21(a)(1) is consistent with state policy.

B. The experience prerequisite in 22 TAC §1.21(a)(2) is consistent with state policy.

Section 1051.705(a)(2) requires applicants to have satisfactory experience in architecture in an office or offices of one or more legally practicing architects, as prescribed by board rule. Section 1.21(a)(2) implements that provision by requiring applicants to complete the Architectural Experience Program (“AXP”), which is administered by the National Council of Architectural Registration Boards (“NCARB”) and provides applicants the opportunity to track a variety of relevant work.⁸ Although the board is not explicitly

⁴ *Id.* at 4 and 7.

⁵ *See id.* at 3; *see also* National Architectural Accrediting Board, *NAAB-Accredited Architecture Programs in the United States*, (April 2021), <https://www.naab.org/wp-content/uploads/Accredited-NAAB-Programs-032421.pdf>.

⁶ *See* 33 Tex. Reg. 2770 (2008) (preamble to proposed amended 22 TAC §1.21) (proposed Apr. 4, 2008) (Tex. Bd. Architectural Exam’rs.).

⁷ National Architectural Accrediting Board, *NAAB International Certification*, <https://www.naab.org/international/international-certification/> (last visited May 24, 2021); National Architectural Accrediting Board, *Education Evaluation Services for Architects (ESSA)*, <https://www.naab.org/eesa/> (last visited May 24, 2021).

⁸ National Council of Architectural Registration Boards, *Gain AXP Experience*, <https://www.ncarb.org/gain-axp-experience> (last visited May 24, 2021).

authorized to delegate the formulation, administration, and evaluation of the experience required of applicants, relying on NCARB's program relieves the board of the administrative burden associated with evaluation of experience and increases the portability of architectural credentials.⁹ Further, the board has relied on NCARB for decades without intervention. For example, Section 1051.308 was enacted in 2011 and references the predecessor program to the AXP, which was also administered by NCARB.¹⁰ Additionally, the board received no comments when it repealed rules that specifically outlined experience requirements through the formal notice-and-comment procedures; while the rules simply mirrored NCARB requirements, the repeal solidified the board's deference to NCARB to administer the experience program for Texas.¹¹ Despite its historical reliance on NCARB, the board continues to exercise oversight of the AXP through regular reviews of program updates, providing input as a member of NCARB, and considering changes in open meetings to ensure experience requirements are appropriate for Texas.¹² Because reliance on the AXP enables the board to fulfill its duty under Section 1051.705(a)(2), and the board maintains oversight of the program's impact to applicants in Texas, §1.21(a)(2) is consistent with state policy.

C. Requiring applicants to pass the national Architect Registration Examination, as incorporated into 22 TAC §1.21(a)(3), is consistent with state policy.

Section 1051.704 requires applicants to pass an examination on any architectural subject or procedure required by the board. Section 1.21(a)(3) incorporates by reference 22 TAC Chapter 1, Subchapter C, which requires applicants to successfully complete all sections of the Architect Registration Examination ("ARE").¹³ Sections 1051.302 and 1051.304(b) recognize that the board may rely on a third party to administer and score its examinations. Further, the ARE has been adopted by architectural regulatory agencies nationwide, so its use in Texas promotes interstate mobility for registrants.¹⁴ Thus, the requirement to take the ARE, as incorporated into §1.21(a)(3), is consistent with state policy.

⁹ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 3. *See also* National Council of Architectural Registration Boards, *Licensing Requirements Tool*, <https://www.ncarb.org/get-licensed/licensing-requirements-tool> (select "Initial Registration" option; "Completion of the AXP/IDP is required." is listed under "Requirements" on the left side of the page) (last visited April 27, 2021).

¹⁰ Acts of 2011, 82nd Leg., R.S., ch. 1157 (H.B. 2284).

¹¹ 41 Tex. Reg. 2570 (2016) (preamble to proposed amended 22 TAC §1.5 and proposed repeal of 22 TAC §§1.191 and 1.192) (proposed Apr. 8, 2016) (Tex. Bd. Architectural Exam'rs.); 41 Tex. Reg. 4487 (2016) (preamble to adoption of amended 22 TAC §1.5 and repeal of 22 TAC §§1.191 and 1.192) (adopted June 17, 2016) (Tex. Bd. Architectural Exam'rs.).

¹² Agency Response to Request for Additional Information (Apr. 16, 2021), at 1-2 and Appendix 1, generally (on file with the Regulatory Compliance Division of the Office of the Governor).

¹³ 22 TAC §1.41 et seq.

¹⁴ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 3. *See also* National Council of Architectural Registration Boards, *Licensing Requirements Tool*, <https://www.ncarb.org/get-licensed/licensing-requirements-tool> (select "Initial Registration" option; "Completion of the ARE is required." is listed under "Requirements" on the left side of the page) (last visited April 27, 2021).

D. The transition provisions in 22 TAC §1.21(b), (c), and (d) are no longer needed, but requiring applicants to submit proof of legal status in 22 TAC §1.21(e) is consistent with state policy.

In §1.21(b), (c), and (d), the board provided for the application of older rules to applicants who applied for registration by examination on or before August 31, 2011. These subsections likely prevented the interruption of education or experience being accrued during a change in registration requirements, but they have been expired for a decade. As neither statute nor circumstances currently require similar language, these subsections may be removed from the rule without affecting competition to improve clarity for applicants. Finally, §1.21(e) requires applicants to submit proof of legal status in the United States in the form of a birth certificate or other documentation, pursuant to federal law and as implemented in Section 231.302(c)(1), Texas Family Code.¹⁵ Thus, that provision is consistent with state policy.

E. The criteria for registration by reciprocity in 22 TAC §1.22 are consistent with state policy.

As stated above, Section 1051.305 clearly authorizes the board to waive any prerequisite to obtaining a certificate of registration for an applicant who holds a license or certificate of registration issued by another jurisdiction that has substantially equivalent registration requirements or with which Texas has a reciprocity agreement. Section 1.22(a) restates that authority, and Subsection (b) outlines the criteria an applicant must meet to obtain a reciprocal registration, including the successful completion of the ARE or a comparable exam, and completion of the AXP or at least three years of acceptable experience following registration in another jurisdiction. The board broadly interprets “acceptable architectural practice” in §1.22(b)(1)(B) as the time during which the applicant was engaged in the practice of architecture while registered in another jurisdiction, which captures professional experience without limitation.¹⁶ Alternatively, applicants may qualify for reciprocity with a national certification from NCARB, which requires completion of the AXP, passage of the ARE, and graduation from an acceptable education program, similar to the board’s requirements for registration by examination.¹⁷ Finally, §1.22(c) requires the payment of the registration fee, consistent with Section 1051.305(c)(1). Thus, §1.22 is consistent with state policy.

¹⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2268 (1996), at Sections 317 and 411 (establishing 42 U.S.C. §666(a)(13) and 8 U.S.C. §1621, respectively).

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

¹⁷ National Council of Architectural Registration Boards, *Get NCARB Certified*, <https://www.ncarb.org/advance-your-career/ncarb-certificate/get-certified> (last visited May 19, 2021). Certification is accepted in 55 U.S. jurisdictions and several international jurisdictions to facilitate reciprocal credentialing. National Council of Architectural Registration Boards, *The NCARB Certificate*, <https://www.ncarb.org/advance-your-career/ncarb-certificate> (last visited May 19, 2021).

III. Determination

Based on the above analysis, 22 TAC §§1.21 and 1.22 are approved by the division and may be readopted pursuant to Section 2001.039, Texas Government Code.



GOVERNOR GREG ABBOTT

To: Debra Dockery, Chair
Julie Hildebrand, Executive Director
Lance Brenton, General Counsel
Texas Board of Architectural Examiners

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

Date: June 16, 2021

Subject: Title 22 Texas Administrative Code Sections 1.211, 1.212, and 1.213 (RCD Rule Review #2021-006)

I. Syllabus

The Texas Board of Architectural Examiners (“board”) filed an intent to review 22 TAC Chapter 1 pursuant to Section 2001.039, Texas Government Code.¹ The board submitted 22 TAC §§1.211, 1.212, and 1.213, which provide detail about the private and public building projects that must be performed by registered architects and those which non-registered individuals may perform, to the Regulatory Compliance Division (“division”) for review on March 26, 2021.² The division invited public comments on the rules for a 30-day period ending April 28, 2021, but received no comments. The division has determined that §§1.211, 1.212, and 1.213 reasonably define the parameters of statutory provisions, and, thus, the rules are approved for readoption.

II. Analysis

Section 1051.701, Texas Occupations Code, prohibits an individual from engaging in the practice of architecture unless registered with the board. Subchapter L, Chapter 1051, lists numerous exemptions to that requirement, including for licensed engineers and employees of architects and engineers. Sections 1.211, 1.212, and 1.213 address the general applicability of the registration requirement to private and public building projects as well as the scope of exemptions to registration for certain categories of those projects. Because the rules limit when and to what extent non-registered individuals may provide architectural services, and therefore

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

² Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 1, 5, and 10 (on file with the Regulatory Compliance Division of the Office of the Governor).

participate in the market, the rules affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.³

Section 1051.606(a)(4) exempts an individual from the requirement to register with the board if the individual does not represent his or herself as an architect or architectural designer and prepares the architectural plans or specifications for, or observes or supervises, the construction, enlargement, or alteration of certain *privately* owned buildings, including some multifamily dwellings, commercial buildings, and warehouses. The general requirement that such plans or specifications be prepared by a registered architect, absent an applicable exemption, is reiterated in §1.211(a). Additionally, Subsections (b), (c), and (d) define terms in Section 1051.606(a)(4) to clarify the scope of some of the statutory exemptions. In §1.211(b), “multifamily dwelling” from Section 1051.606(a)(4)(C) is defined consistently with “dwelling” in the International Building Code, and, because Section 1051.606(a)(4)(B) already addresses single- and dual-family dwellings, defining “multifamily” as containing more than two units is a reasonable interpretation by the board.⁴ Similarly, both §1.211(c) and (d) rely on commonly understood meanings to define “commercial building” and “warehouse that has limited public access” from Sections 1051.606(a)(4)(D) and (E).⁵ Because §1.211 relies on commonly understood meanings that are supported by industry standards to define the scope of exemptions to the registration requirement, the rule is consistent with state policy.

Similarly, §1.212 requires an individual to be a registered architect to prepare architectural plans or specifications for certain *publicly* owned buildings, pursuant to Section 1051.703(a), unless an exemption applies. Consistent with Section 1051.703(a)(2), §1.212(a) outlines the rule’s applicability to new public buildings used for education, assembly, or office occupancy with construction costs exceeding \$100,000. This subsection also includes definitions of those building types based on the classifications of buildings and structures in the International Building Code.⁶ Next, §1.212(b) addresses the requirement to use a registered architect for certain alterations and additions to publicly owned buildings that exceed \$50,000 in construction

³ *Id.* at 4, 8, and 12-13.

⁴ International Code Council, *International Building Code*, “Section 202: Definitions,” at “Dwelling” and “Dwelling Unit,” (International Code Council, Inc., 2021 ed.) <https://codes.iccsafe.org/content/IBC2021P1>; *and see* Section 214.211(3), Texas Local Government Code (defining “residential”). Currently, the 2003 edition of the International Building Code is the designated municipal commercial building code in Texas, pursuant to Section 214.216, Texas Local Government Code; on January 1, 2022, statute will update to apply the 2012 edition. Acts of 2021, 87th Leg., R.S., ch. __ (H.B. 738).

⁵ For “commercial,” *see* Section 214.211(5), Texas Local Government Code; *see also* Merriam-Webster.com, “Commercial,” <https://www.merriam-webster.com/dictionary/commercial> (last visited May 20, 2021). For “warehouse,” *see* Merriam-Webster.com, “Warehouse,” <https://www.merriam-webster.com/dictionary/warehouse> (last visited April 13, 2021); *and compare* International Code Council, *International Building Code*, “Section 309: Mercantile Group M,” at §309.1, with “Section 311: Storage Group S,” at §311.1, (International Code Council, Inc., 2021 ed.) <https://codes.iccsafe.org/content/IBC2021P1>.

⁶ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 7-8; International Code Council, *International Building Code*, “Section 303: Assembly Group A,” at §303.1; “Section 304: Business Group B,” at §304.1; and “Section 305: Educational Group E,” at §305.1, (International Code Council, Inc., 2003 ed.) <https://codes.iccsafe.org/content/IBC2003>.

costs, pursuant to Section 1051.703(a)(3). But, §1.212(c) acknowledges that certain architectural plans and specifications may be prepared by licensed engineers, in addition to architects, as defined in board rule and consistent with Section 1051.0016(b). And, §1.212(d) clarifies that designation as a prime design professional does not affect the scope of practice of an engineer or architect, reiterating Section 1051.703(b). These provisions appropriately reflect statutory requirements for a registered architect to perform certain services with respect to publicly owned buildings, unless exempted, and use industry standards to define the extent of those requirements. Thus, §1.212 is consistent with state policy.

Finally, §1.213 defines two terms found in Section 1051.606, which exempts certain activities from regulation under the chapter. Section 1051.606(a)(3) qualifies an exemption for a building alteration if it involves a substantial structural or exitway change. Section 1.213(a) defines a structural change as “substantial” if a licensed engineer is required to prepare the engineering plans and specifications pursuant to Chapter 1001, Texas Occupations Code. Sections 1001.0031(c), 1001.053, and 1001.056 require licensed engineers to design structural systems for projects of greater costs and wider use than those for which a licensed engineer is not required; thus, it makes sense that these more complex projects also warrant having registered architects prepare any architectural plans and specifications or provide supervision as otherwise required. Finally, §1.213(b) defines an exitway change as “substantial” if it affects a means of egress intended to be used by more than 50 people, consistent with the approach taken in the International Building Code to trigger increased requirements for features like stairways, corridors, and exit passageways.⁷ As a result, the board would expect a registered architect to prepare such a plan or specification. These definitions are reasonable interpretations of statute and are supported by industry standards. Thus, §1.213 is consistent with state policy.

III. Determination

Based on the above analysis, 22 TAC §§1.211, 1.212, and 1.213 are approved by the division and may be readopted pursuant to Section 2001.039, Texas Government Code.

⁷ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 12; International Code Council, *International Building Code*, “Chapter 10: Means of Egress,” at §§1009.1, 1016.2, and 1020.2, (International Code Council, Inc., 2003 ed.) <https://codes.iccsafe.org/content/IBC2003>.



GOVERNOR GREG ABBOTT

To: Debra Dockery, Chair
Julie Hildebrand, Executive Director
Lance Brenton, General Counsel
Texas Board of Architectural Examiners

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

Date: June 16, 2021

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

I. Syllabus

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

II. Analysis

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

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

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

³ *Id.* at 2-3.

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

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

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

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

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

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

⁴ *Id.* at 4-5, 8-9, and 13-14.

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

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

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

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

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

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

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

⁹ *Id.* at 2-3 and 11-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In §3.21(b) and (c), the board provided for the application of older rules to applicants who commenced their education or experience prior to September 1, 1999, and applied for registration by examination on or before August 31, 2011. Both subsections likely prevented the interruption of education or experience being accrued during a change in registration requirements, but they have been expired for a decade. As neither statute nor circumstances currently require similar language, these subsections may be removed from the rule without affecting competition to improve clarity for applicants. Additionally, §3.21(d) requires applicants to submit proof of legal status in the United States in the form of a birth certificate or other documentation, pursuant to federal law and as implemented in Section 231.302(c)(1), Texas Family Code.¹⁸ Thus, that provision is consistent with state policy.

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

¹⁷ 22 TAC §3.41 et seq.

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

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

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

III. Determination

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

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

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

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

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

²² *Id.*

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

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

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

Consideration of Draft Rules for Proposal – 22 Tex. Admin Code § 3.191
Relating to the Experience Requirement for Landscape Architectural Registration by Examination

Background

Occupational licensing agencies, including TBAE, are required to submit existing rules that affect market competition for review by the Governor’s Regulatory Compliance Division (RCD) during the quadrennial rule review required under Tex. Gov’t. Code § 2001.039. The RCD was created under new law adopted in 2019, Occupations Code Chapter 57, which implements processes within the governor’s office to provide active supervision of regulatory board rules that affect market competition. Under these processes, agencies are required to submit any rule that affects market competition for review by the RCD. For the purposes of Chapter 57, a rule is considered to affect market competition if it would (1) create a barrier to market participation in this state; or (2) result in higher prices or reduced competition for a product or service provided by or to a license holder in this state.

Rule Review by the RCD

After a preliminary review of TBAE’s rules to determine potential impacts on market competition, staff submitted Board Rules 1.21, 1.22, 1.211, 1.212, 1.213, 3.21, 3.22, and 3.191 to the RCD for review. On June 16, 2021, the RCD notified the Board of the completion of its review. The RCD determined that each of the submitted rules, other than Rule 3.191, are consistent with state policy and could be readopted. With respect to Rule 3.191, which describes the experience required for landscape architectural registration by examination, the RCD identified three issues that must be resolved prior to re adoption. Those issues are discussed below.

Issues Identified by RCD and Draft Amendments for Consideration

Discrepancy in Experience Requirements for Domestic Graduates vs. Foreign Graduates

The RCD’s first issue relates to a discrepancy between the number of years of experience required for registration by domestic and foreign graduates. Under the rules as currently written, domestic graduates of LAAB-accredited programs are required to complete two years of experience, whereas graduates of qualifying foreign programs (which are not accredited by LAAB) are required to complete three years of experience.

This issue was directly addressed in a rule change that took effect on March 22, 2016. Prior to the rule change, an applicant with a professional degree from a foreign landscape architectural program was subject to the general eligibility requirement of two years of experience, provided that that the program was substantially equivalent to a LAAB-accredited professional program, as determined by Education Credential Evaluators (ECE) or another organization acceptable to the Board. However, TBAE was forced to consider amendments to the rule after ECE notified TBAE that it could not certify that a program met standards for LAAB-certification. Rather, ECE would only certify that the program was substantially equivalent to a doctorate, master’s degree, or

baccalaureate degree in landscape architecture. Because TBAE was unaware of any other organization that could certify equivalency to a LAAB-accredited program (as required by the rule), the former rule left no path for a foreign graduate of a landscape architectural program to become registered as a landscape architect by examination in Texas.

To remedy this issue, TBAE adopted amendments to §§ 3.21 and 3.191. Under the amendments, currently in effect, a foreign graduate is eligible for registration if ECE or another acceptable organization has concluded that the program is substantially equivalent to a doctorate, master's degree, or baccalaureate degree in landscape architecture. However, the Board's rule change also required such graduates to complete three, rather than two, years of experience according to the Table of Equivalents. The additional experience required under the rule change was intended supplement any potential deficit in educational preparation associated with the loss of certified equivalence with LAAB standards.

However, the RCD noted that the evaluation performed by ECE both before and after the rule change remained the same. For that reason, and because the Board's rules continue to recognize that foreign programs can be substantially equivalent to domestic degrees, the RCD determined that the discrepancy in required experience is inconsistent with state policy and not supported by statute. In the absence of a showing that accredited programs have an experiential component not found in foreign programs, or some similar substantive difference, the RCD requires the Board to amend §3.191 to implement the same experience requirement for foreign and domestic graduates.

To address this issue, the draft rule would be amended to repeal subsection (b), which requires that qualifying foreign graduates complete three years of experience. Instead, under amendments to subsection (a), all applicants for registration by examination would be required to complete the same amount of experience, regardless of whether they graduated from a LAAB-accredited domestic program, or a substantially equivalent foreign program.

Requirements Relating to Minimum Weekly Hours and Employment Duration

The RCD has also expressed disagreement with §3.191(e), which implements minimum requirements for full-time and part-time employment and employment duration in recognizing qualifying work experience. Under the current rule, an applicant for registration must work at least thirty-five hours per week for a minimum of ten consecutive weeks for full credit, or between twenty and thirty-four hours per week for a minimum of six consecutive months for half credit. As noted in staff's response to the RCD, this rule is based on the premise that an applicant who spends more time in a firm, for longer, would likely be incorporated more deeply into the firm's projects and exposed to a greater breadth of tasks compared to a similar employee who is employed only for short periods or a few hours per week.

However, the RCD expressed concern that this rule could discourage aspiring landscape architects from seeking diverse or meaningful opportunities for experience of shorter duration because credit is not available. In noting that longer employment does not guarantee deeper incorporation into a greater breadth of tasks, the RCD determined that the limitations in §3.191(e) do not serve the

statutory directive that applicants complete satisfactory experience and, therefore, the subsection is inconsistent with state policy.

To address this issue, staff recommends that the rule be amended to measure experience in hour units, rather than years. If the experience requirement is measured in hours, then it is unnecessary to define minimum work hours to qualify for half-time or full-time credit in converting to annual equivalency. Rather, each qualifying work hour may be applied directly to the experience requirement for registration. The draft rule would require all applicants for registration to complete 3,640 hours of experience in accordance with Table 22 TAC §3.191(a). This figure is equal to thirty-five hours per week (the minimum number of hours to qualify for full time experience under the current rule) multiplied by fifty-two weeks, multiplied by two years. Additionally, the draft rule would repeal the requirements relating to minimum weekly hours or duration of employment.

Accumulation of Experience Credit Before Graduation

Finally, the RCD has determined that §3.191(g) must be amended before re adoption. Under this rule, 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. This is comparable to similar requirements that were formerly required of architectural applicants. However, following changes to the NCARB IDP/AXP program, and corresponding TBAE rule changes, this requirement was dropped. Under the current NCARB AXP requirements, individuals become eligible to participate in the AXP after earning a high school diploma or completing an established equivalent. In noting that TBAE relies on substantially the same authority to set experience standards for architecture and landscape architecture and that any inconsistencies between requirements should be reasonably justified by and consistent with evidence, the RCD determined there is no evidence that the opportunities to earn experience for landscape architectural students are measurably inferior to those available for architectural students. Therefore, the restriction in §3.191(g) is not supportable by state policy.

To address this issue, the draft rule would be amended to allow applicants to claim credit for experience earned after the date the applicant successfully earned a high school diploma or completed an established equivalent. This rule change would institute an equivalency between the requirements for landscape architect applicants under Board rules, and the AXP eligibility requirements for architect applicants.

Staff's Review of § 3.191

Pursuant to Gov't. Code §2001.039, staff has reviewed Board Rule 3.191 and it is Staff's opinion that the reasons for the initial adoption of the rule continue to exist, and that the rule should be re adopted with amendments as required by the RCD.

Draft rule 3.191 is attached to this summary for the Board's consideration, along with the RCD's determination regarding Board Rules 3.21, 3.22, and 3.191.

Staff's Recommendation:

Staff recommends that the Board approve the draft amendments to 22 Tex. Admin. Code §3.191 for proposal and publication in the Texas register, with authority for the general counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register.

RULE §3.191 Description of Experience Required for Registration by Examination

(a) Pursuant to §3.21, ~~an Applicant for landscape architectural registration by examination (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/the Applicant has gained at least 3,640 hours of two (2) years' actual~~ experience in accordance with the following table: ~~Texas Table of Equivalents for Experience in Landscape Architecture contained in subsection (c).~~

~~(b) Pursuant to §3.21(a)(1)(D) of Subchapter B, an applicant who graduated from a qualifying landscape architectural education program located outside the United States must successfully demonstrate that he/she has completed 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:~~

Attached Graphic

Figure: 22 TAC §3.191(~~a~~)

	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	1,820 hours 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	1,820 hours 1 year
LA-4	Teaching on a full-time basis in an LAAB-accredited program in landscape architecture	full credit	1,820 hours 1 year

~~(b)(4)~~ An Applicant must earn at least ~~1,820 hours one year~~ of credit under the conditions described in category LA-1.

~~(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.~~

~~(c)(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 1,820 hours ~~one year~~ of credit under this section by teaching for twenty (20) semester credit hours or thirty (30) quarter credit hours.

~~(d)g~~ An Applicant may not earn credit for experience gained prior to the date the Applicant successfully earned a high school diploma or completed an established equivalent ~~completed the educational requirements for landscape architectural registration by examination in Texas.~~

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise and assist the Board in addressing this uncontested case.

Case Number: 159-21A
Respondent: Christina Marie Contros
Location of Respondent: Austin, TX
Nature of Violation: Violation of Continuing Education Requirements
Instrument: Report and Notice of Violation

Findings:

- Christina Marie Contros (hereafter “Respondent”) is registered as an architect in Texas with registration number 14644.
- On May 17, 2021, Respondent was notified by the Board that she was being audited for compliance with the continuing education requirements for the audit period of January 1, 2020 through December 31, 2020.
- On June 1, 2021, Respondent replied that she could not locate her continuing education certificates.

Applicable Statutory Provisions and Rules:

- By failing to maintain a detailed record of her continuing education activities for the period of January 1, 2020 through December 31, 2020, Respondent violated Board Rule 1.69. The standard administrative penalty for failing to maintain a detailed record of continuing education activities is **\$700**.

Action Recommended by Executive Director:

- Enter an Order which adopts the findings of fact, conclusions of law, and recommended administrative penalty of **\$700** as set forth in the Report and Notice of Violation dated June 30, 2021.

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS
SUMMARY OF PROPOSED
ENFORCEMENT ACTION**

This document is an internal document relating to an uncontested case to be considered by the Texas Board of Architectural Examiners. This document is prepared to inform, advise and assist the Board in addressing this uncontested case.

Case Number:	137-211
Respondent:	Rachel Rae Kelsey
Location of Respondent:	Houston, TX
Nature of Violation:	Violation of Continuing Education Requirements
Instrument:	Report and Notice of Violation

Findings:

- Rachel Rae Kelsey (hereafter “Respondent”) is registered as an interior designer in Texas with registration number 12085.
- On January 15, 2021, Respondent was notified by the Board that she was being audited for compliance with the continuing education requirements for the audit period of January 1, 2019 through December 31, 2019.
- On April 7, 2021, Respondent replied that she could not locate her continuing education certificates.

Applicable Statutory Provisions and Rules:

- By failing to maintain a detailed record of her continuing education activities for the period of January 1, 2019 through December 31, 2019, Respondent violated Board Rule 5.79. The standard administrative penalty for failing to maintain a detailed record of continuing education activities is **\$700**.

Action Recommended by Executive Director:

- Enter an Order which adopts the findings of fact, conclusions of law, and recommended administrative penalty of **\$700** as set forth in the Report and Notice of Violation dated May 5, 2021.

The TEXAS BOARD OF ARCHITECTURAL EXAMINERS



Be It Known That Corbett "Chase" Bearden

Has distinguished himself by his long years of dedicated service to all the people who live, work, and play in the built environment of the State of Texas; and

WHEREAS, Mr. Bearden is a native Texan, hailing from the city of Harlingen in Cameron County; and

WHEREAS, Mr. Bearden graduated Concordia University with a bachelor's degree in Business; and

WHEREAS, Mr. Bearden has been a guest lecturer in the Texas State University Therapeutic Recreation Department and a Member of the Rehabilitation Council of Texas; and

WHEREAS, Mr. Bearden has volunteered as a coach for local nurses and therapists on providing treatment, teaching life skills, and working with patients who suffer spinal cord injuries; and

WHEREAS, Mr. Bearden was appointed by Governor Rick Perry in 2009 as a Member of the Texas Board of Architectural Examiners and subsequently served the people of Texas in several important Board roles, including as Secretary-Treasurer and Vice-Chair, and as a Member of the Executive Committee, Executive Director Performance Review Committee, and Legislative Review Committee; and

WHEREAS, Mr. Bearden served on the Credentials and Policy Advisory Committees of the National Council of Architectural Registration Boards; and

WHEREAS, Mr. Bearden has played an invaluable role not only in the elimination of architectural barriers to ensure that all Texans have equal access to the built environment, but also in the protection of the public health, safety, and welfare both within and without the Lone Star State, now, therefore, be it

RESOLVED

That the Texas Board of Architectural Examiners, in Formal Meeting assembled this 26th day of August, 2021, does publicly acknowledge its appreciation of outstanding service to the state of Texas and have voted unanimously for this

RESOLUTION OF APPRECIATION

To Corbett "Chase" Bearden, and have caused a copy of this Resolution to be included within the minutes of this Board.

Debra Dockery, FAIA
Chair

Rosa Salazar, RID
Vice-Chair

Fernando Trevino
Secretary/Treasurer

TBAE EVENT CALENDAR 2021

JANUARY						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

01 New Year's (Closed)
12 87th TX Legislature Begins
18 M L King Day (Closed)
19 Confederate Heroes Day (Skeleton)

JULY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

05 Independence Day (Closed)

FEBRUARY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

09 Presidents' Day (Closed)
25 Board Meeting

AUGUST						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

05 2021 NCARB Licensing Summit - Miami, FL
12 ASID 2021 Expo Dallas Design Center
26 Board Meeting
27 LBJ Day (Skeleton)

MARCH						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

04 NCARB Reg. Summit MBE Workshop

SEPTEMBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

01 FY 2022 Begins.
06 Labor Day (Closed)
10 2021 LRGV-AIA Conf. South Padre Island
22 CLARB Annual Meeting, Phoenix, AZ
30 2021 Regulatory Law Seminar-Nashville, TN

APRIL						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

02 Good Friday (Skeleton)
21 San Jacinto (Skeleton)
28 ASLA-TX Conf. Galveston

OCTOBER						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

07 TxA Annual Conference San Antonio Conv. Ctr

MAY						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

31 Memorial Day (Closed)

NOVEMBER						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

11 Veterans Day
12 CIDQ Annual Delegates Mtg Minneapolis, MN
16 Board Meeting
24 Agency Holiday (Skeleton)
25 Thanksgiving Day
26 Day after Thanksgiving

JUNE						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

22 Board Meeting
24 NCARB Annual Meeting
30 Personal Financial Statement Filing Deadline

DECEMBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

24 Christmas Eve (Closed)
27 Agency Holiday (Closed)
28 Agency Holiday (Closed)
29, 30, 31 Agency Holidays (Skeleton)