

## **TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

Board Meeting by Videoconference/Telephone Call During Disaster Due to COVID-19  
Thursday, February 25, 2021  
9:00 a.m. – Conclusion

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, this meeting will be held by video conference call, as authorized under Texas Government Code section 551.127.

Members of the public will have access and a means to participate in this meeting, by two-way communication, Please register for Meeting of the Texas Board of Architectural Examiners on Feb 25, 2021 9:00 AM CST at: <https://attendee.gotowebinar.com/register/815034297597712907>

Registration is free and required to participate in the meeting. After registering, registrants will receive a confirmation email from GoToWebinar and instructions on how to join the webinar.

An electronic copy of the agenda and meeting materials may be found at <https://www.tbae.texas.gov/content/documents/TBAE/agendas/BoardNoteBookFeb2021.pdf>

A recording of the meeting may be obtained by contacting Katherine Crain at [katherine.crain@tbae.texas.gov](mailto:katherine.crain@tbae.texas.gov).

A public comment period will be provided at the beginning of the meeting. Registrants may provide comment by utilizing the "Raise Hand" feature in the webinar. The meeting organizer will contact those who have raised their hands and arrange for comment. When the Board reaches the public comment item, the Chair will recognize commenters by name and provide the commenter an opportunity to speak. According to 22 Tex. Admin. Code §7.06, each member of the public shall be allotted five (5) minutes to make a presentation to the Board. The five-minute period may be extended at the Board's discretion.

The Board will meet at the above-stated time to consider and take appropriate action on the items listed below.

## TEXAS BOARD OF ARCHITECTURAL EXAMINERS

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9:00 a.m. – Conclusion

# AGENDA

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
  2. **Approval of November 19, 2020 Board Meeting Minutes** (*Action*)
  3. **Executive Director Report** (*Information*)
  4. **Report from National Council of Architectural Registration Boards**
  5. **Board Member Learning and Envisioning** (*Information*)  
Operations Division Overview
  6. **Proposed Rules for Adoption** (*Action*)  
Repeal and Replacement of 22 Tex. Admin. Code §§ 1.69, 3.69, and 5.79, and Amendments to §§ 1.232, 3.232, and 5.242.
  7. **Quadrennial Review of Agency Rules Pursuant to Government Code Sec. 2001.039 and Submission of Rules to Governor's Office Regulatory Compliance Division** (*Information*)
- Debra Dockery  
Joyce Smith  
Debra Dockery
- Debra Dockery
- Julie Hildebrand
- NCARB
- Julie Hildebrand
- Lance Brenton
- Lance Brenton

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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. 015-21A Cano, Steve Allen Arch #13924  
Case No. 118-20A Puhr, John J. Arch #21296  
**B. Continuing Education Cases:**  
Case No. 047-21A Grassle, Robert Craig Arch #12036
- The Board may meet in closed session pursuant to TEX. GOV’T CODE ANN. §551.071(1) to confer with legal counsel.*
9. **Board Officers Election** (*Action*) Debra Dockery
10. **Legislative Committee Update** (*Information*) Bob Wetmore
11. **Reports on Board National Regulatory Boards and Board Member and Staff Committee Service** (*Information*) Debra Dockery
12. **Report on Conferences and Meetings** (*Information*) Debra Dockery  
New Board Member Orientation – Sep 24  
NCARB Committee Summit – Dec 4–5
13. **Report on Upcoming Conferences and Meetings** (*Information*) Debra Dockery  
A. NCARB Regional Summit – Mar 4–5  
B. Texas ASLA Conference – *April 28, Galveston*  
C. Personal Financial Statement Filing Deadline – **April 30**  
D. NCARB Special Meeting – May 12–14  
E. NCARB Annual Business Meeting – June 23-25
14. **Board Member Comments/Future Agenda Items** (*Information*) Debra Dockery
15. **Upcoming Board Meetings** (*Information*) Debra Dockery  
Tuesday, June 22, 2021  
Thursday, August 26, 2021  
Tuesday, November 16, 2021

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

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**16. Adjournment**

Debra Dockery

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**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**

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

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**  
**Minutes of November 19, 2020 Board Meeting**  
**By Videoconference/Telephone Call During Disaster Due to COVID-19**  
Centennial Towers, 505 E. Huntland Dr., Ste. 350  
Austin, TX 78752  
9:00 a.m. until completion of business

<b>AGENDA ITEMS</b>	<b>DESCRIPTIONS</b>																		
	Mr. Glenn Garry (Communications Manager) welcomed the audience to the third online TBAE board meeting and provided general information on how the meeting by videoconference would be conducted.																		
<b>1A. Call to Order</b>	Ms. Dockery called the meeting to order at 9:02 a.m.																		
<b>1B. Roll Call</b>	<p>Ms. Smith called the roll.</p> <p>The following Board members acknowledged their presence for the meeting:</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>Joyce J. Smith</td> <td>Secretary/Treasurer, Public Member</td> </tr> <tr> <td>Jennifer Walker</td> <td>Architect Member</td> </tr> <tr> <td>Darren L. James</td> <td>Architect Member</td> </tr> <tr> <td>Tim A. Bargainer</td> <td>Landscape Architect Member</td> </tr> <tr> <td>Rosa G. Salazar</td> <td>Registered Interior Designer Member</td> </tr> <tr> <td>Fernando Trevino</td> <td>Public Member</td> </tr> <tr> <td>Chase Bearden</td> <td>Public Member</td> </tr> </table>	Debra Dockery	Chair, Architect Member	Robert (Bob) Wetmore	Vice-Chair, Architect Member	Joyce J. Smith	Secretary/Treasurer, Public Member	Jennifer Walker	Architect Member	Darren L. James	Architect Member	Tim A. Bargainer	Landscape Architect Member	Rosa G. Salazar	Registered Interior Designer Member	Fernando Trevino	Public Member	Chase Bearden	Public Member
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<b>1C. Excused and Unexcused Absences</b>	There were no excused or unexcused absences.																		
<b>1D. Determination of a Quorum</b>	A quorum was present.																		
<b>1E. Recognition of Guests</b>	Mr. Garry acknowledged the following individuals in attendance: Becky Walker of Texas Society of Architects; Bradley Smith, Attorney; and Donna Vining of the Texas Association of Interior Designers. The following members of TBAE staff were present: Julie Hildebrand, Executive Director; Christine Brister, Human Resources; Glenda Best, Operations Manager; Dale Dornfeld, IT Manager; Mike Alvarado, Registration Manager; Katherine Crain, Legal Assistant; Lance Brenton, General Counsel; and Jack Stamps, Managing Investigator.																		

<p><b>1F. Chair’s Opening Remarks</b></p>	<p>Ms. Dockery welcomed Board members, the audience and TBAE staff. She complimented staff’s high level of production during the pandemic and summarized staff’s commitment and efforts. Furthermore, she welcomed two new Board members, Darren L. James and Tim A. Bargainer, and the reappointment of another Board member, Fernando Trevino.</p> <p>Ms. Dockery also addressed the procedures to be used during the online board meeting.</p>
<p><b>1G. Public Comments</b></p>	<p>Ms. Dockery outlined the procedure for a member of the public to provide comment to the Board and opened the meeting for public comment.</p> <p>Mr. Garry stated that no public comment had been offered.</p>
<p><b>2. Introduction of New Board Members</b></p>	<p><b>Darren L. James, FAIA, Architect Member</b> (Appointed Term: Aug. 12, 2020 – Jan. 31, 2025) <b>Tim A. Bargainer, PLA, ASLA, Landscape Architect Member</b> (Appointed Term: Aug 12, 2020 – Jan 31, 2025) <b>Fernando Trevino, Sr., Public Member</b> (Reappointed Term: Aug 12, 2020 – Jan 31, 2025)</p> <p>Mr. James expressed his excitement to be a new Board member of TBAE. He stated that he was energized to be part of the organization and to help ensure the protection of the public.</p> <p>Mr. Bargainer introduced himself and his professional history. He shared his excitement to be a Board member of TBAE. He said he is a strong advocate of quality work and protecting the health safety and welfare of the citizens of Texas.</p>
<p><b>3. Approval of August 25, 2020 Board Meeting Minutes</b></p>	<p>A MOTION WAS MADE AND SECONDED (Smith/Bearden) TO APPROVE THE AUGUST 25, 2020 BOARD MEETING MINUTES.</p> <p>Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:</p> <p>Debra Dockery – Approved Bob Wetmore – Approved Joyce Smith – Approved Jennifer Walker – Approved Chase Bearden – Approved Rosa Salazar – Approved Fernando Trevino – Approved James Darren – Approved Tim Bargainer – Approved</p> <p>THE MOTION PASSED UNANIMOUSLY.</p>

<p><b>4. Executive Director's Report</b></p> <p>A. Summary of Executive Accomplishments</p> <p>B. Operating Budget/Scholarship Fund: Presentation on 4<sup>th</sup> Quarter FY 2020 Expenditures/Revenue</p> <p>C. Report on Annual Financial Report (AFR)</p>	<p>Ms. Dockery invited Ms. Hildebrand to deliver the Executive Director's report.</p> <p>Ms. Hildebrand referred the Board to her report on page 26 in the Board materials, summarized that report, and invited any questions from the Board.</p> <p>Ms. Dockery asked the Board members if there were any questions.</p> <p>Mr. Bearden asked for an update on the agency's transition to the new location.</p> <p>Ms. Hildebrand noted that occupancy was still limited due to the pandemic and discussed the precautions that were being taken to promote employee safety. She noted that everything had been moved in and that the space is beautiful with lots of light. She said she looked forward to having a full staff in the office.</p> <p>Ms. Smith thanked Ms. Hildebrand and stated that she was pleased to see high productivity despite the pandemic.</p> <p>Mr. Wetmore referred to page 31 regarding the ARE Scholarship Fund and asked why there weren't more applications. He suggested that it would be a good topic for the newsletter.</p> <p>Ms. Dockery stated that she had the same concern and described conversations with emerging professionals who were not aware of the existence of the scholarship.</p> <p>Ms. Hildebrand stated that she would add these concerns to her notes and address the issue in the future.</p> <p>Ms. Dockery noted that the pandemic had impacted candidates' access to testing centers. She referred to page 28 of the Board materials and noted that this might be reflected in the fact that reciprocal registrations outnumbered registrations by exam for architects.</p>
<p><b>5. Trend Analysis Presentation on Agency Performance and Operations</b></p>	<p>Ms. Hildebrand referred the Board to trend analysis report on page 48 in the Board materials, summarized that report, and invited any questions from the Board.</p> <p>Ms. Smith inquired about architect registration rates, in particular the comparison between the overall number of registrants by examination and reciprocity.</p>



	<p>Ms. Hildebrand explained that she does not include this information in the trend analysis but does include it in the monthly numbers and referred to page 28 for that data.</p> <p>Ms. Dockery noted that, except for Texas, New York, California and perhaps other large states, most states have far more reciprocal registrants than in-state registrations.</p> <p>Mr. Bearden referred to the difficulty for some examinees in accessing testing centers and asked whether this would result in a flood of people taking exams as testing capacity increases.</p> <p>Ms. Hildebrand replied that the numbers were back to whether they were previously, albeit without necessarily making up the ground that was lost. As such, new registrations were down year over year, but were starting to pick up again.</p> <p>Ms. Dockery thanked Ms. Hildebrand for a very good report.</p>
<p><b>6. Board Member Learning and Envisioning</b></p> <p>Elimination of Architectural Barriers</p>	<p>Jack Stamps addressed the Board and provided a report on the Texas Accessibility Standards and the Board’s enforcement activities related to this law. Mr. Stamps addressed the history of accessibility law in Texas, statutory requirements for TBAE’s licensees, disciplinary referrals from TDLR, TBAE’s enforcement cases and public outreach efforts.</p> <p>Ms. Hildebrand asked whether the Board had any questions or comments for Mr. Stamps. Ms. Salazar commented that she thought it was a great presentation.</p> <p>Mr. Bearden thanked Mr. Stamps for his years of service on this particular issue. Mr. Bearden explained to the new Board members that the law requires the Board membership to include a public member with a physical disability and that he serves in that role. Mr. Bearden explained that he has used a wheelchair for 27 years since he was injured in an accident. He emphasized the importance of universal design and accessibility in allowing individuals with disabilities to live their lives in ways that were not possible previously. But he also discussed the consequences of accessibility failures. Mr. Bearden urged design professionals to be attentive to accessibility requirements. Otherwise, it will likely be a member of the disability community who receives the negative reaction from a business owner that is notified of a failure in accessibility. Mr. Bearden provided just a few examples of his experiences involving accessibility failures, including the fact that the state capitol only has one accessible exit, which would be insufficient in the event of a disaster. He also discussed a beautiful ramp he encountered while traveling to an NCARB conference - unfortunately, the ramp ended a foot short of the “accessible” door. He was amazed that hotel staff knew to warn him about it but had not done anything to actually fix the issue. Mr. Bearden emphasized the importance of the required plan</p>

	<p>review for accessibility compliance in Texas, because that review can and should identify issues before they are built in. Mr. Bearden thanked Mr. Stamps for all his work.</p> <p>Ms. Dockery thanked Mr. Stamps for his presentation. She also thanked Ms. Hildebrand for the very helpful Board Member Learning and Envisioning presentations. Mr. Wetmore and Mr. Trevino agreed.</p>
<p><b>7. Committee Appointments</b></p>	<p>Ms. Dockery appointed the following Board members to committees:</p> <p>Rules Committee: Jennifer Walker (Chair), Joyce Smith, Rosa Salazar and Tim Bargainer.</p> <p>Legislative Committee: Bob Wetmore (Chair), Rosa Salazar and Chase Bearden.</p> <p>Budget Committee: Joyce Smith (Chair), Fernando Trevino and Darren James.</p> <p>She thanked the board members for their service and said she looked forward to the committee work over the next year.</p>

<p><b>8 and 9. Rules Committee Update and Consideration of Draft Rules for Proposal – Draft Rules 1.69, 3.69, and 5.79 relating to continuing education requirements; and Draft Rules 1.232, 3.232, and 5.242, relating to administrative penalties for violations of continuing education requirements.</b></p>	<p>Ms. Walker gave a report on the rules committee meeting and stated that it was very productive. She explained that after discussion between the committee members and counsel from Mr. Brenton, the committee recommended approval of the draft rules, with revisions to the out-of-state equivalency and preservation of the university credit provision, which Mr. Brenton would explain to the Board.</p> <p>Mr. Brenton referred the Board to the summary and associated Board materials for this rulemaking action, which began on page 58. He summarized those materials, provided staff’s recommendation, discussed the committee findings and recommendations, and invited any questions or comments from the Board.</p> <p>Mr. Brenton addressed the rules committee recommendations as follows. First, Mr. Brenton addressed continuing education credit for college courses. He explained that the committee recommended that the rule be retained as written, because it was easy to apply and should result in a more broad-based continuing education experience for registrants.</p> <p>Mr. Brenton also discussed the committee’s recommendations regarding compliance with out-of-state CE requirements as an exemption to compliance with Texas requirements. Mr. Brenton explained that the current rule allows a registrant to claim an exemption from CE requirements if the registrant is registered in another jurisdiction and satisfies that jurisdiction’s CE requirements, provided that the other jurisdiction has registration requirements that are “substantially equivalent” to Texas requirements. Staff initially recommended to the committee that that this test of substantial equivalence be dropped, because the standards under which another jurisdiction issued a registration has little relevance to whether completion of the jurisdiction’s continuing education requirements should provide an exemption to Texas CE requirements. However, the committee developed a different recommendation, under which a registrant would be exempt from Texas CE requirements if the registrant completed another state’s CE requirements, provided that those CE requirements are substantially equivalent to Texas CE requirements. In light of the committee recommendation, Mr. Brenton presented three options to the Board. Option A: retain the exemption as currently written in rule. Option B: repeal the exemption. Option C: implement the committee’s recommendation.</p> <p>Mr. Wetmore asked whether the test of substantial equivalence would be difficult to apply and how staff would make that determination.</p> <p>With respect to the process, Mr. Brenton noted that, if a registrant claimed an exemption from CE due to compliance with another state’s CE requirements and was then audited, staff would compare the registrant’s completed CE with the other jurisdiction’s requirements to make the determination. Mr. Brenton acknowledged the possibility of disagreement</p>
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about whether another jurisdiction's requirements were substantially equivalent and stated this issue informed staff's initial recommendation to the committee. But, if the Board chose the committee's recommendation, he suggested that staff could address that disagreement informally by asking the registrant to complete make-up CE to address a deficiency, rather than pursuing disciplinary action.

Mr. Bargainer thanked Mr. Brenton for his research following the rules committee meeting and shared his support for the third option.

Ms. Salazar asked how often registrants claim the exemption.

Mike Alvarado responded that only one or two registrants claim this exemption per month.

Ms. Dockery noted that under the existing rules, even if a registrant claimed the exemption, the registrant was still required to complete at least one hour of CE on sustainable or energy-efficient design, pursuant to the general requirement under the Board's rules. But she also noted another general requirement, which is the completion of one hour in barrier-free design. She asked why somebody claiming the exemption was able to be exempt from the barrier-free requirement, but not the sustainable design requirement.

Mr. Brenton responded that the CE requirement for sustainable or energy-efficient design was mandated by statute. For that reason, the Board previously determined that the exemption should not apply to this requirement.

Ms. Dockery expressed her preference that registrants be required to complete both the barrier-free requirement and the sustainable design requirement, even if they are claiming an exemption for completion of out-of-state CE.

Mr. Wetmore expressed agreement with this position, especially because the TDLR accessibility review process is unique to Texas. He said it was important for all registrants to understand the requirements.

Mr. Bearden expressed his agreement. He emphasized the difference between various states' accessibility requirements and said that if we are requiring accessibility CE for Texas-based registrants, we should be requiring it from all registrants.

Ms. Hildebrand responded that the exemption under the draft rule could be amended to require completion of the barrier-free requirement, as discussed by Ms. Dockery, Mr. Wetmore, and Mr. Bearden.

Ms. Dockery called for a motion.

A motion was made and seconded (Smith/Bearden) to approve the draft amendments to 22 Tex. Admin. Code §§1.69, 1.232, 3.69, 3.232, 5.79, and 5.242, including “Option C” relating to the exemption for out-of-state continuing education, amended to require completion the barrier-free CE requirement along with sustainable design, 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.

Ms. Salazar noted that CE categories and definitions for health, safety, and welfare had been taken from NCARB and AIA. She asked whether the same information was incorporated from CIDQ for RIDs.

Mr. Brenton responded that the relevant information for the RID rule was taken from the International Design Continuing Education Council (IDCEC).

Ms. Walker thanked the Board and staff for taking a deep dive into the rule following the committee’s review.

Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:

- Debra Dockery – Approved
- Bob Wetmore – Approved
- Joyce Smith – Approved
- Chad Davis – Approved
- Jennifer Walker – Approved
- Chase Bearden – Approved
- Rosa Salazar – Approved
- Fernando Trevino – Approved
- Darren James -- Approved
- Tim Bargainer -- Approved

THE MOTION PASSED UNANIMOUSLY.

	<b>The Board took a break at 10:50 a.m. and reconvened at 11:05 a.m.</b>
<p><b>10. Digital Model Initiative</b></p>	<p>Ms. Dockery reminded the Board that TBAE had been meeting with representatives of the Professional Engineers Board (TBPELS) as part of the Digital Model Work Group, with the most recent meeting held on November 4<sup>th</sup>. The group was convened by TBPELS following a request for a policy advisory opinion on the use of digital models in professional engineering and how to use, sign and seal such models in a manner that is consistent with the Texas Engineering Practice Act and Board rules. The request involved the common occurrence of the design engineer transmitting a 3-D model to a fabrication engineer for coordination. TBAE has anticipated technology changes such as this will require the agency to review its own rules, as architects are often the originators of the 3-D model and the lead in coordinating with engineers along with landscape architects and interior designers. Therefore, it made sense for TBAE representatives to join TBPELS in this discussion. After some lively meetings, and a deep dive into various topics such as configuration management, hash models, block chain solutions and other authentication measures, the group determined that the technology is not yet universally adopted that would indicate who was responsible for what areas, what was transmitted as the sealed version for bidding, permitting and construction, and verification of responsible party. Therefore, representatives of both boards decided it was appropriate to leave the existing rules for sealing documents in place but to consider a performance requirement in the future for issuing building information models.</p> <p>Ms. Dockery related that the TBPELS policy advisory council is considering the issuance of a policy that would require minimum expectations of the 3-D model and leave it to the individual engineer to decide how this would be achieved. For example, a record model could be maintained and issued along with a transmittal setting forth the details of the time and date and other information establishing identity, version control, and responsible party.</p> <p>Ms. Dockery noted that TBAE does not have a policy advisory process. She also noted that permitting continues to occur through the issuance and acceptance of traditional 2-D plan sets, and that the 3-D models are coordination tools only at this point. As such, the official documents and record of responsible charge are still signed and sealed in the traditional manner. She noted that the Board had not received any complaints regarding the use of digital models, and that other licensing Boards had not begun regulating this issue. She suggested that the Board continue to follow developments and be prepared to embark on rulemaking to address a performance requirement for the issuance of 3-D models in the near future.</p> <p>Ms. Dockery welcomed any comment from Board members.</p>

	<p>Mr. James stated that his firm uses Revit as their digital platform and has created digital models but confirmed that record documents are peeled off and issued as 2-D printed documents. Mr. Wetmore confirmed the same.</p> <p>Mr. Bearden asked whether these digital models would help to check accessibility in advance.</p> <p>Ms. Dockery explained that it could as software capabilities advance.</p> <p>Ms. Salazar asked whether any jurisdictions are allowing this type of modeling to be submitted for permitting.</p> <p>Ms. Dockery stated that the engineers had conducted research and that she had looked into it as well, and they have not located a jurisdiction that accepts this type of modeling for permitting purposes.</p>
<p><b>11. ARE Remote Proctoring Discussion</b></p>	<p>Ms. Dockery updated the Board on remote proctoring of the ARE exam. She explained that NCARB’s Strategic Plan had envisioned the ability to take the ARE without using a testing center by 2024. However, due to difficulties in accessing testing centers early in the pandemic, this schedule has been moved up and NCARB has made changes to the exam in order to accommodate remote proctoring and ensure the testing experience is the same whether occurring by remote proctoring or in a testing center. She summarized these changes, including an increase in the optional break time, locking items that have been reviewed prior to a break, the replacement of scratch paper with the digital whiteboard, 15-20 fewer questions per division, and an increase in the amount of time per division. She also discussed the technological requirements for taking the exam and requirements for the remote environment. She noted there would be a delay in issuing results, because the new exam format requires a certain number of exams to be completed prior to determining a cut score.</p> <p>Ms. Dockery acknowledged that some examinees have expressed frustration regarding the loss of scratch paper in completing the exam. She said NCARB was remiss in setting a start date for the reformatted test without first providing examinees with access to the practice test and digital whiteboard. She said this has created a lot of anxiety for examinees. She also expressed concern over the reduction in the number of exam questions as well as the low pass rate for Texas at 42% and the nation at 52%. She said she was not sure whether this was an exam problem or a training problem, but that she was very concerned.</p> <p>Ms. Salazar asked whether there was any feedback from examinees regarding the availability of remote proctoring, particularly whether this was a welcome option.</p> <p>Ms. Dockery noted substantial dissatisfaction amongst examinees relating to the changes that were necessary to enable remote proctoring, especially</p>

	<p>the loss of scratch paper. But she also noted that the pandemic had really caused an issue with the ability to schedule a seat at exam centers, and that many examinees welcomed the opportunity for expanded testing.</p> <p>Ms. Hildebrand added that CLARB conducted a pilot project on remote proctoring in Canada. The results of the program indicated that the initial set-up of the testing environment was stressful for examinees, but once that occurred, they were happy to not have to travel to a test center or stay in a hotel the night before an exam.</p> <p>Mr. Wetmore shared his discussions with young professionals in his firm regarding testing. He said the general attitude toward testing accommodations now is positive, especially as it relates to flexibility in testing dates. He was hopeful that the ability to test from home would be similarly helpful once it is implemented.</p> <p>Ms. Dockery noted that there are large areas of the State of Texas that are far from testing centers, so the ability to take the exam in a candidate’s home would be helpful.</p> <p>Ms. Walker agreed that having this option is a welcome addition. Ms. Walker inquired whether NCARB has considered the issue of technical difficulties or connection issues while taking the exam. Ms. Dockery confirmed that there is a protocol for re-establishing a connection. She also stated that this problem sometimes occurred in testing centers as well and that was why minimum technical requirements were important.</p>
<p><b>12. Enforcement Cases Review and possibly adopt ED’s recommendation in the following enforcement cases:</b></p>	<p>Ms. Dockery asked Mr. Brenton to present the disciplinary cases.</p>
<p><b>12A. Registrant/Non-Registrant Cases:</b></p>	<p><b>Nguyen, Martin (#205-17N) (SOAH Docket Case No. 459-20-4299)</b></p> <p>Mr. Brenton directed the Board to the written materials for this case beginning on page 111 of the Board packet. He provided a history of the proceeding at SOAH, a description of the proposed findings of fact and conclusions of law and staff’s recommendation identified on page 111.</p> <p>A MOTION WAS MADE AND SECONDED (Wetmore/James) TO ENTER THE AGREED ORDER, INCLUDING THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, WHICH IMPOSES AN ADMINISTRATIVE PENALTY OF \$10,000, WITH TWO \$2,500 PAYMENTS PAYABLE WITHIN 60 DAYS, AND PAYMENT OF THE REMAINING \$5,000 DEFERRED AND SUBJECT TO CANCELLATION, PROVIDED THAT RESPONDENT COMPLIES WITH THE TERMS OF THE ORDER AND DOES NOT VIOLATE THE LAWS OR RULES OF THE BOARD FOR A FIVE-YEAR DEFERRAL PERIOD.</p>



Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:

- Debra Dockery – Approved
- Bob Wetmore – Approved
- Joyce Smith – Approved
- Jennifer Walker – Approved
- Chase Bearden – Approved
- Rosa Salazar – Approved
- Fernando Trevino – Approved
- Darren James – Approved
- Tim Bargainer -- Approved

THE MOTION PASSED UNANIMOUSLY.

**Grace Garza (#070-20N)**

Mr. Brenton provided a summary of this matter as described on page 119 of the Board materials.

A MOTION WAS MADE AND SECONDED (Bargainer/Salazar) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTY OF \$3,000 AND REQUIRES THE RESPONDENT TO CEASE AND DESIST FROM VIOLATING OCCUPATIONS CODE CHAPTER 1051, AS SET FORTH IN THE REVISED REPORT AND NOTICE OF VIOLATION DATED JULY 29, 2020.

Mr. Bearden inquired whether the investigators look for other violations or other projects when a complaint is received about a non-registrant.

Mr. Stamps replied that they do review other projects and TDLR submittals.

Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:

- Debra Dockery – Approved
- Bob Wetmore – Approved
- Joyce Smith – Approved
- Jennifer Walker – Approved
- Chase Bearden – Approved
- Rosa Salazar – Approved
- Fernando Trevino – Approved
- Darren James – Approved
- Tim Bargainer -- Approved

THE MOTION PASSED UNANIMOUSLY.

**Ammar Jaber (#016-20N)**

Mr. Brenton provided a summary of this matter as described on page 121 of the Board materials.

A MOTION WAS MADE AND SECONDED (Walker/Bargainer) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTY OF \$3,000 AND REQUIRES THE RESPONDENT TO CEASE AND DESIST FROM VIOLATING OCCUPATIONS CODE CHAPTER 1051, AS SET FORTH IN THE REVISED REPORT AND NOTICE OF VIOLATION DATED SEPTEMBER 28, 2020.

Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:

Debra Dockery – Approved  
Bob Wetmore – Approved  
Joyce Smith – Approved  
Jennifer Walker – Approved  
Chase Bearden – Approved  
Rosa Salazar – Approved  
Fernando Trevino – Approved  
James Darren -- Approved  
Tim Bargainer -- Approved

THE MOTION PASSED UNANIMOUSLY.

**Vaci, John S. (#257-19A)**

Mr. Brenton provided a summary of this matter as described on page 122 of the Board materials.

A MOTION WAS MADE AND SECONDED (Bearden/Smith) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AS SET FORTH IN THE REVISED REPORT AND NOTICE OF VIOLATION DATED OCTOBER 6, 2020, AND WHICH REPRIMANDS THE RESPONDENT FOR FAILING TO BE RESPONSIBLE AND ACCOUNTABLE FOR THE CARE, CUSTODY, CONTROL, AND USE OF HIS ARCHITECTURAL SEAL AND PROFESSIONAL SIGNATURE.

Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:

Debra Dockery – Approved  
Bob Wetmore – Approved  
Joyce Smith – Approved  
Jennifer Walker – Approved  
Chase Bearden – Approved  
Rosa Salazar – Approved  
Fernando Trevino – Approved  
Darren James – Approved

	<p>Tim Bargainer -- Approved</p> <p>THE MOTION PASSED UNANIMOUSLY.</p>												
<p><b>10B. Continuing Education Cases:</b></p>	<p>Ms. Dockery suggested that the Board consider and vote upon the continuing education cases as a group unless there were recusals. No recusals were noted.</p> <p>The Board considered and voted upon the continuing education cases as a group.</p> <p>A MOTION WAS MADE AND SECONDED (Walker/Wetmore) TO ENTER AN ORDER WHICH ADOPTS THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE PENALTIES AS SET FORTH IN THE REPORT AND NOTICES OF VIOLATION FOR EACH OF THE FOLLOWING CONTINUING EDUCATION CASES:</p> <table border="0" data-bbox="516 800 1258 940"> <tr> <td><b>Case No. 075-20A</b></td> <td><b>Mario Bolullo</b></td> <td><b>Arch#10830</b></td> </tr> <tr> <td><b>Case No. 370-19I</b></td> <td><b>Sharon Rhodes Cowart</b></td> <td><b>RID#10581</b></td> </tr> <tr> <td><b>Case No. 076-20I</b></td> <td><b>Suzanne McHenry</b></td> <td><b>RID#10945</b></td> </tr> <tr> <td><b>Case No. 172-20A</b></td> <td><b>Francisco Valadez</b></td> <td><b>Arch#15586</b></td> </tr> </table> <p>Ms. Hildebrand requested roll call from the Board members on the vote and received the following responses:</p> <p>Debra Dockery – Approved  Bob Wetmore – Approved  Joyce Smith – Approved  Jennifer Walker – Approved  Chase Bearden – Approved  Rosa Salazar – Approved  Fernando Trevino – Approved  Darren James -- Approved  Tim Bargainer -- Approved</p> <p>THE MOTION PASSED UNANIMOUSLY.</p>	<b>Case No. 075-20A</b>	<b>Mario Bolullo</b>	<b>Arch#10830</b>	<b>Case No. 370-19I</b>	<b>Sharon Rhodes Cowart</b>	<b>RID#10581</b>	<b>Case No. 076-20I</b>	<b>Suzanne McHenry</b>	<b>RID#10945</b>	<b>Case No. 172-20A</b>	<b>Francisco Valadez</b>	<b>Arch#15586</b>
<b>Case No. 075-20A</b>	<b>Mario Bolullo</b>	<b>Arch#10830</b>											
<b>Case No. 370-19I</b>	<b>Sharon Rhodes Cowart</b>	<b>RID#10581</b>											
<b>Case No. 076-20I</b>	<b>Suzanne McHenry</b>	<b>RID#10945</b>											
<b>Case No. 172-20A</b>	<b>Francisco Valadez</b>	<b>Arch#15586</b>											
<p><b>13. Upcoming Board Meetings</b></p>	<p>Ms. Dockery presented the following dates for Board meetings in 2021.</p> <p>Thursday, February 25, 2021  Tuesday, June 22, 2021  Thursday, August 26, 2021  Tuesday, November 16, 2021</p>												
<p><b>14. Report on Conferences and Meetings</b></p>	<p>Ms. Hildebrand said the meetings went well. She noted a common feature of these virtual meetings was a condensed schedule material so that it would only be one day of attending online.</p>												

<p><b>A.</b> CLARB Annual Meeting/50<sup>th</sup> Anniversary – Sep 10</p> <p><b>B.</b> NCARB Member Board Chair/Member Board Executive Leadership Summit – Oct 21</p> <p><b>C.</b> TBAE &amp; NCARB Architect Licensure Virtual presentation, Texas Tech – El Paso – Sep 24</p> <p><b>D.</b> Stephen F. Austin presentation – Oct 7</p> <p><b>E.</b> TxA Annual Conference – Oct 28-30</p> <p><b>F.</b> CIDQ Council of Delegates Meeting – Nov. 12</p>	<p>Ms. Dockery confirmed that she attended the CLARB Annual Meeting and there were some good discussions regarding issues across the nation.</p> <p>Ms. Dockery also stated that she attended the NCARB Member Board Chair and Member Board Executive Leadership Summit which was held in October. She admitted that she had been unsure of how successful the meeting would be, because much of the value of this meeting in the past was found in the spontaneous conversations that occur among the attendees. But she said the virtual meeting actually worked very well and there were some good discussions regarding issuing facing the boards nationwide.</p> <p>Ms. Salazar commented that she attended the CIDQ Annual meeting. She stated that they had conversations concentrating on post-pandemic opportunities for RIDs. She also valued the legislative updates and a session on how to increase certifications and registrations.</p>
<p><b>15.</b> <b>Report on Upcoming Conferences and Meetings</b></p>	<p>Ms. Dockery stated that the NCARB Committee Summit would happen on December 4 and 5 and she was on the Responsible Control Task Force and looked forward to that meeting. Ms. Smith would also be attending this meeting because she was serving on a committee.</p> <p>Ms. Salazar provided a brief update to the previously reported meetings and stated that she was on the IDEP Task Force and had been assigned to the follow-up task force regarding an analysis of candidate experience. Ms. Dockery thanked her for her service.</p>
<p><b>16.</b> <b>Board Member Comments/Future Agenda Items</b></p>	<p>Ms. Dockery asked if the Board members had any comments or suggestions on future agenda items. No comments or suggestions were received.</p> <p>Ms. Hildebrand explained that, with the impending start of the legislative session, staff would be meeting with associations and Board members would be reviewing bills at the next Board meeting. The upcoming legislative session would run from January 12<sup>th</sup> through May 31<sup>st</sup>.</p>

<b>17.</b> <b>Adjournment</b>	Ms. Dockery thanked the Board members for their service.  THE MEETING WAS ADJOURNED AT 12:07 P.M.
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APPROVED BY THE BOARD:

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

## TBAE Staff Accomplishments: November 2020 Board Meeting

### November

- NCARB Council Hour
- Digital Model Workgroup Meeting
- CLARB/ASLA Licensure Summit
- CLARB Leadership Advisory Council Meeting
- CIDQ Annual Meeting
- NCARB Incidental Practice Task Force Meeting
- Rules Committee Meeting
- TBAE Board Meeting
- Continue Work from Home – Return to Office 1 Day/Week, 50% Cap
- Periodic Updates to Governor
- Bi-Weekly Managers Meetings
- Monthly SDSI Executive Meetings
- Weekly State of Texas Regulatory Executive Meetings

### December

- Danielle Lerma – New License & Permit Specialist
- NCARB Committee Summit
- New Board Member Orientation
- NCARB/NOMA Survey Data
- NCARB Council Hour
- CLARB BillTrack 50 Training
- NCARB Board of Directors Update Meeting
- NCARB Demonstration Exam Meeting
- CLARB Leadership Advisory Council Meeting
- CertNexus Certified Cyber Secure Coding Training – IT
- Texas Government Roundtable – Microsoft Cybersecurity Deep Dive – IS
- Texas Tribune – A Preview of the 2021 Legislative Session
- Pre-Legislative Meeting with Texas Society of Architects
- Pre-Legislative Meeting with Texas American Society of Landscape Architects
- NCARB-TBAE Presentation – International Architects Route to Licensure for Houston AIA in English and in Spanish – Registration
- Continue Work from Home – Voluntary Return to Office, 50% Cap
- Periodic Updates to Governor
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings
- Monthly SDSI Executive Meetings

### January

- CLARB Leadership Advisory Council Meeting
- NCARB Pre-Board of Directors Update Meeting
- Legislative Committee Meeting



- Continue Work from Home – Voluntary Return to Office, 50% Cap
- Periodic Updates to Governor
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings
- Monthly SDSI Executive Meetings



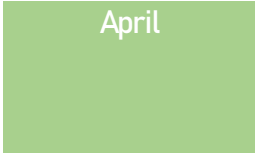
February

- NCARB Continuing Education Collaboration Meeting
- CLARB Regional Meeting
- CLARB Leadership Advisory Council Meeting
- NCARB Incidental Practice Task Force Meeting
- Valuing Professional Licensing in the US – A New Report from ARPL and Oxford Economics
- TBAE Board Meeting
- Continue Work from Home – Voluntary Return to Office, 50% Cap
- Periodic Updates to Governor
- Bi-Weekly Managers Meetings
- Bi-Weekly State of Texas Regulatory Executive Meetings
- Monthly SDSI Executive Meetings



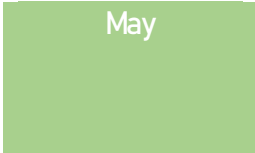
March

- CLARB Leadership Advisory Council Meeting
- NCARB Regional Summit



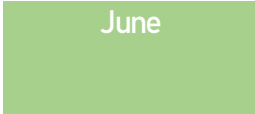
April

- Texas ASLA Annual Conference
- CLARB Mid-Year Update
- CLARB Leadership Advisory Council Meeting
- Personal Financial Statement Filing



May

- CLARB Uniform Application and Standard and Pre-Approval Feedback Sessions
- CLARB Mid-Year Financial Update
- NCARB Special Meeting



June

- CLARB Model Law Review
- TBAE Board Meeting
- NCARB Annual Business Meeting

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

	FY 2021 Approved Budget	FY 2021 Expenditures as of 11-30-20	FY 2021 Percentage Earned/Spent
<b>Revenues:</b>			
Licenses & Fees	\$ 2,823,345	\$ 688,522	24.39%
Business Registration Fees	\$ 148,468	\$ 33,548	22.60%
Late Fee Payments	\$ 142,984	\$ 36,100	25.25%
Other	\$ 2,500	\$ 750	30.00%
Interest	\$ -	\$ 261	
<b>Potential Draw on Fund Balance</b>	<b>\$ 43,032</b>		
<b>Total Revenues</b>	<b>\$ 3,160,329</b>	<b>\$ 759,180</b>	<b>24.02%</b>
<b>Expenditures:</b>			
Salaries and Wages	\$ 1,688,262	\$ 429,149	25.42%
Payroll Related Costs	\$ 584,067	\$ 141,939	24.30%
Professional Fees & Services	\$ 30,000	\$ 7,000	23.33%
Travel			
Board Travel	\$ 18,000	\$ -	0.00%
Staff Travel	\$ 15,000	\$ -	0.00%
Office Supplies	\$ 9,000	\$ 1,313	14.58%
Postage	\$ 7,000	\$ 450	6.43%
Communication and Utilities	\$ 23,000	\$ 7,547	32.81%
Repairs and Maintenance	\$ 1,000	\$ -	0.00%
SWCAP Payment with Office Rental	\$ 127,000	\$ 14,912	11.74%
Equipment Leases--Copiers	\$ 7,000	\$ 1,090	15.57%
Printing	\$ 6,000	\$ 1,892	31.54%
Operating Expenditures	\$ 28,000	\$ 16,510	58.96%
Registration Fees--Employee Training	\$ 10,000	\$ 7,942	79.42%
Membership Dues	\$ 21,000	\$ 5,640	26.86%
Payment to GR	\$ 510,000	\$ 127,500	25.00%
<b>IT Upgrades</b>	<b>\$ 48,000</b>	<b>\$ 4,960</b>	<b>10.33%</b>
<b>Information Security</b>	<b>\$ 28,000</b>	<b>\$ 1,826</b>	<b>6.52%</b>
<b>Total Expenditures</b>	<b>\$ 3,160,329</b>	<b>\$ 769,669</b>	<b>24.35%</b>
<b>Excess/ (Deficiency) of Rev over Exp.</b>	<b>-</b>	<b>\$ (10,489)</b>	<b>-0.33%</b>

<b>Funding for 8 months</b>	<b>\$ 2,106,675</b>
<b>Excess Fund Balance</b>	<b>\$ 961,225</b>
<b>Total Fund Balance</b>	<b>\$ 3,067,900</b>

Administrative Penalties Collected	\$ 11,305.00
General Revenue Collected	\$ -

Figure 1



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

	FY 2021 Budget	FY 2021 Actual Sept. 1, 2020-- November 30, 2020
<b>Operating Fund Beginning Fund Balance:</b>	-	-
<b>Adjusted Beginning Balance</b>	-	-
<b>Scholarship Fund Beginning Balance</b>	\$ 78,974.29	
<b>Total Beginning Scholarship Fund Balance</b>	\$ 78,974.29	\$ 78,974.29
<b>Revenues:</b>		
Scholarship Fees	-	\$ 2,205.00
<b>Total Revenues</b>	-	\$ 2,205.00
<b>Expenditures:</b>		
Operating Expenditures-Scholarship Payments		\$ 2,000.00
<b>Total Expenditures</b>		\$ 2,000.00
<b>Excess/(Deficiency) of Rev. over Exp.</b>	\$ 78,974.29	\$ 79,179.29
<b>Fund Balance</b>	\$ 78,974.29	\$ 79,179.29

Number of Scholarships Awarded

4

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

Figure 1

Cases Opened		Cases Dismissed		Days to Investigate a Case		Cases Resolved (as of month ended)	
75 Fiscal Year to Date		63 FYTD		61 January, 2021		52	
+38 Year-over-Year		+23 YOY		83 FY Average to Date		6 Warning(s) by Executive Director	0 Voluntary Surrender(s)
29 Case(s) referred to Legal		Dismissal details TDLR: 63 Other: 2* <small>*e.g. No evidence; not a violation.</small>		Context Typical target: 115-330 (2018-19) SDSI avg. actual: 110 (2018)		8 Disciplinary Action(s) by Board	14 *Notice(s) of Violation
						0 *Complaint(s) Filed at SOAH	0 *Informal Conference(s)

\*Matters are ongoing and not yet resolved

Customer Service (2020)		Newsletter		Employee Engagement		Contact volume (to front desk alone)	
22,915 Customers surveyed		85% Read at least half (2018)		439 Most recent score (2020)		859 Calls (FYTD)	
1,234 Responses		21,000+ Recipients		419 Avg. score since 2010		290 Emails (FYTD)	
94% Customer satisfaction		"Disciplinary Actions" Most-read topic (2018)		Strengths: Supervision Strategic Workplace	Weaknesses: Pay Benefits Development	Avg. monthly calls FYTD: 286	
						Avg. monthly emails FYTD: 97	

Applicants		New Registrants		Registrants (active)		The Rest
<b>433</b> Fiscal Year to Date	-76 (509) Year-over-Year	<b>342</b> FYTD	-60 (402) YOY	<b>19501</b> As of month ended	+153 (19348) YOY	A survey of the Registration Division's additional accomplishments and activities

By-examination applications received FYTD, by profession:

Architect:	146
RID:	68
LA:	27
<b>Subtotal:</b>	<b>241</b>

By-examination registrations issued FYTD, by profession:

Architect:	103
RID:	53
LA:	20
<b>Subtotal:</b>	<b>176</b>

### Architects

Resident:	8660
<u>Nonresident:</u>	<u>5097</u>
<b>Subtotal:</b>	<b>13757</b>

**1222**

exam results received FYTD  
1052 Arch | 0 RID | 170 LA

Reciprocal applications received FYTD, by profession:

Architect:	167
RID:	2
LA:	23
<b>Subtotal:</b>	<b>192</b>

Reciprocal registrations issued FYTD, by profession:

Architect:	144
RID:	0
LA:	22
<b>Subtotal:</b>	<b>166</b>

### RIDs

Resident:	3750
<u>Nonresident:</u>	<u>264</u>
<b>Subtotal:</b>	<b>4014</b>

**131**

Continuing Education audits conducted FYTD

**2**

referred to Investigations FYTD

## About this report

**FYTD:** Fiscal Year to Date. Compares current data to that of the beginning of the current fiscal year.

**YOY:** Year-over-Year. Compares current data to that of 12 months prior.

### Landscape Architects

Resident:	1226
<u>Nonresident:</u>	<u>504</u>
<b>Subtotal:</b>	<b>1730</b>

**4**

scholarship applications approved FYTD

### All registrants

Resident:	13636
<u>Nonresident:</u>	<u>5865</u>
<b>Total:</b>	<b>19501</b>

**68**

Certificates of Standing issued FYTD



# TEXAS Board of Architectural Examiners

Architects ■ Landscape Architects ■ Registered Interior Designers

## Operations Division Review

# Executive Summary/Introduction

The purpose of this review is to provide the Board members with a brief overview of the Operations Division roles and responsibilities.

The Operations division consists of two staff members, the Operations Manager and the Human Resources Specialist.

The division's functional role and responsibilities are three-fold: Board Relations, Administration Management and Human Resource Management. Most of the division's responsibilities involve dealing with people, how to relate with the employees and managers across multiple disciplines, outside stakeholders, and the appointed Board members to develop a uniform agency culture, improve performance, and comply with applicable laws and regulations.

We focus on a continuous performance management system to plan and discuss shared purpose, identifying development areas and setting goals for the next year as opposed to "Let's talk about all that you did or did not do in the past year." This approach is built upon the concept that feedback about performance and goals should not be focused on the negative. The agency's performance appraisal system is designed to recognize positivity and what is being accomplished effectively with feedback to reports on assigned goals, career discussions and mentoring.

# Board Relations

## Functions

Board meeting agenda review

Board notebook compilation, distribution, & web posting

New Board member orientation

Travel & Reimbursements

ED Evaluation process

Legal & Employment forms

Personal Financial Statement Filing

Wall Certificates for Officers' signatures

# Administration Management

## Functions

Operations policy and procedures development & maintain agency policies and procedures

Performance management - RACI

Succession planning

Office rules and regulations

Project management

Training & staff development – group & individual

Mail & check distribution

Office maintenance

Oversight agency contacts

Staff travel and reimbursements

## Compliance Audits

*Comptroller of Public Accounts – CAPPS & Travel*

*State Auditor's Office – Travel, Classification*

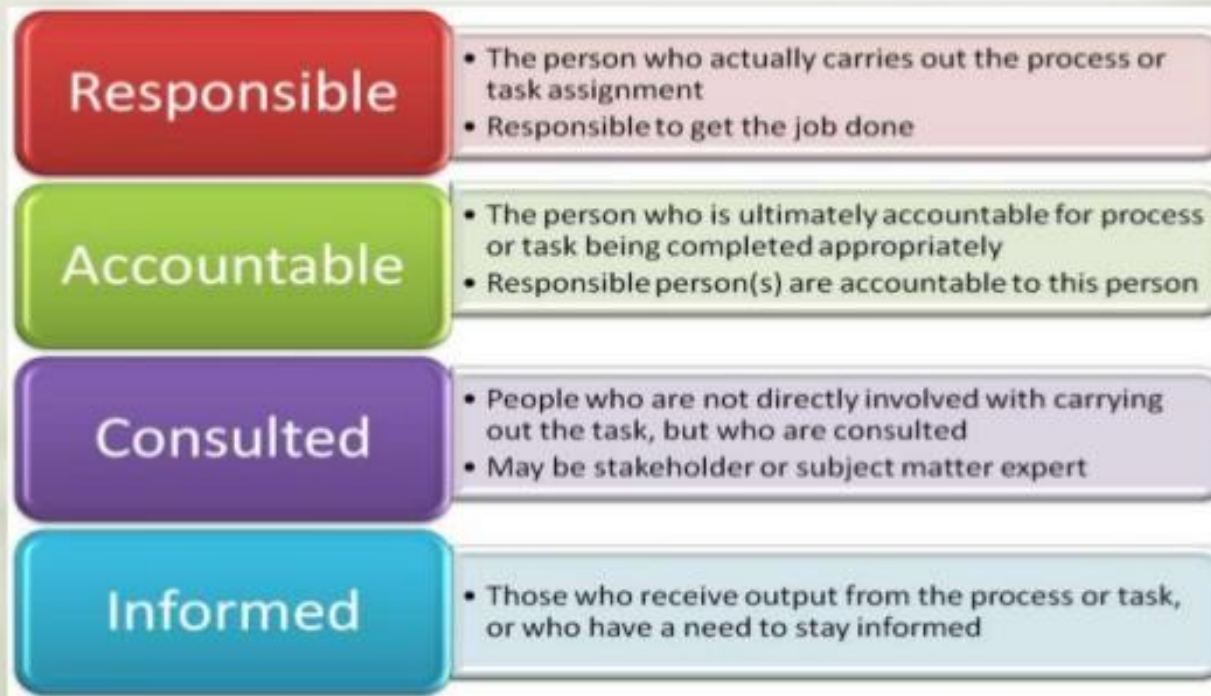
*Office of Risk Management – Risk Management*

*Texas Workforce Commission – EEOC/Civil Right Division, Workers' Compensation*

# Performance Management - RACI Definition

## \* Definition of RACI;

- RACI is stand for **Responsible**, **Accountable**, **Consulted** and **Informed**.

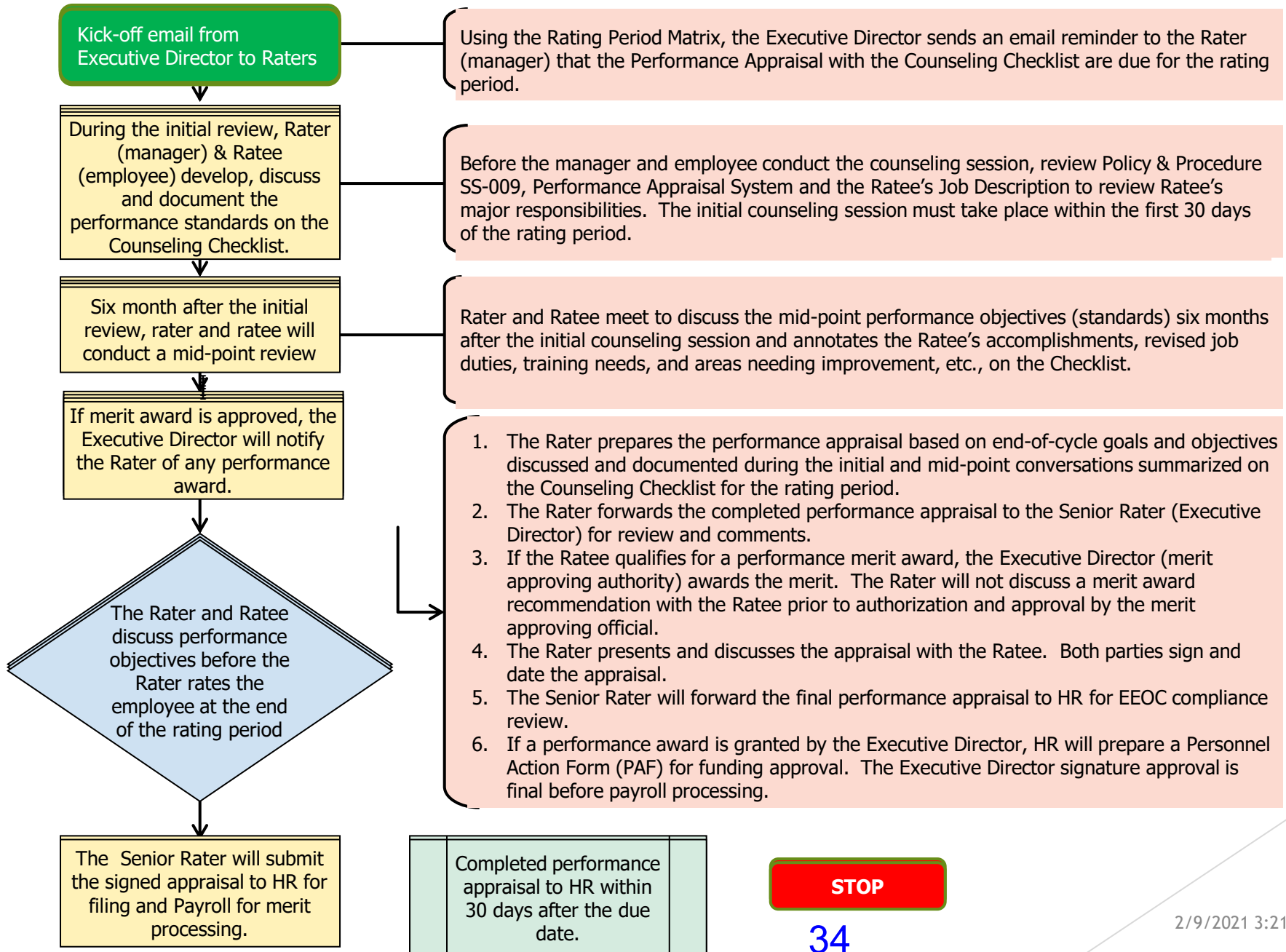




# Performance Management - Ops Division RACI

Operations Division	ED	IT	IS	OPS	Comm	ENF.	FIN	GC	REG.	SPVR
Board Meeting Preparation	A	C	C	R	C	C	C	C	C	
Board Member Training	A	C	C	R	C	C	C	R	C	
Board Member Support	A			R						
Executive Director Support	A			R						
Continuity of Operations Plan	A	C	C	R	C	C	C	C	C	
Maintenance of Operating Policy Manual	A	I	I	R	I	I	I	I	I	
External Audits	A	C	C	R	C	C	C	C	C	
Travel Processing	A			R			Ca			Ca
Purchase Processing - Board and ED Conferencing	A			R			Ca			
Mail Processing & Managing Daily Check Register	A			R			Ca			
Office Supply Requisitioning, Distribution & Budget Planning	A	C	C	AR	C	C	C	C	C	
Time and Attendance Reporting	I			AR						Ca
Risk Management	I		C	AR				C		
Survey of Employee Engagement	A			AR						
Celebratory Coordination (Birthdays, Holidays, etc.)	I			AR						C
Facility Operations and Landlord Communications	C	C	C	AR	C	C	C	C	C	
HR - Hiring/Employee Actions	A			R				C		Ca
HR - Performance Management (Reviews - Process)	A			R				C		I
HR - Job Descriptions and Classifications	A			R				C		Ca
HR - Benefits	I			AR						
HR - Workers' Comp, FMLA, ADA, EEOC, etc.	A			R				C		C
HR - Employee Training (EEOC, etc.)	A			R			Ca			Ca
HR - Employee Grievances	A			R				C		C
HR - Facility Maintenance/Office Safety and Security	I			AR						
HR - Personnel Actions	A			R			Ca	C		C
HR - Service Awards/Incentive Awards	AR			AR				C		C
CAPPS HR/Payroll Management	A			AR			C			

# Performance Management - The Performance Appraisal Process



# Succession Planning

## **Succession Planning**

Approximately 55 percent of employees will be eligible to retire between FY 2021 and FY 2027. The urgency is to continue to anticipate the potential loss of expertise and institutional knowledge.

While succession planning remains an important role within the agency, the agency's leadership is defining perspectives for assessing, grooming, and placing the right talent throughout the agency. The agency continues to illustrate potential career paths and allow employees to weigh in on the course their path ultimately takes. The leadership is focusing their commitment to top performers and helps to ensure those talented team members have the required aptitude and mind set to meet the agency's future objectives. The senior level staff is preparing employees for advancement or promotion into challenging roles within the agency.

In order to keep the agency's plan a fluid process that not only tracks the talent and development of employees, but also includes them in the process, the agency's effective succession planning process include:

- Link Strategic and Workforce Planning Decisions
- Analyze Gaps
- Identify Talent Pools
- Develop Succession Strategies
- Implement Succession Strategies
- Monitor and Evaluate

# Succession Planning Cont'd

## **Succession Management Results**

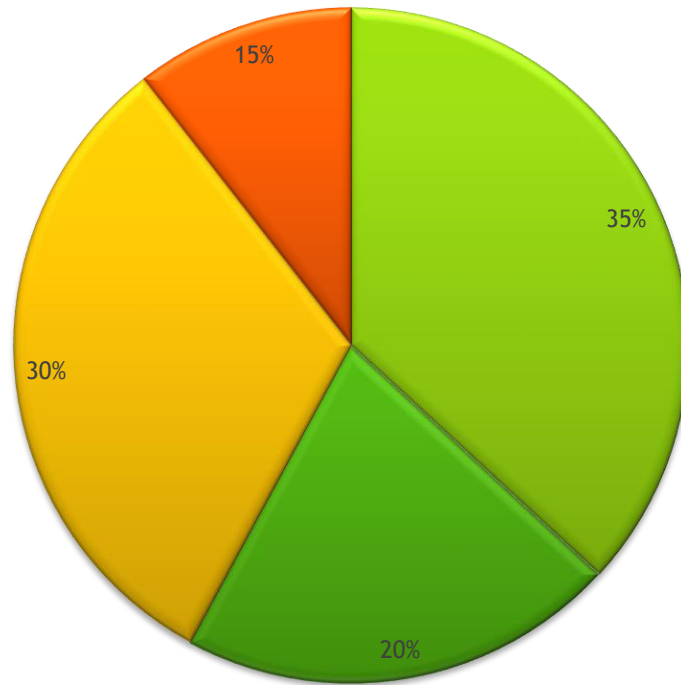
In the past two years, the TBAE identified successor candidates to fill key leadership and other crucial roles in the agency as we continue to realize significant employee engagement and retention gains. The agency continues to push formal talent and succession planning further into the business to touch all roles that are critical to day-to-day operations.

Employees are provided with performance feedback and are alerted to potential future opportunities within the agency.

The agency's Operations Division plays a vital role in successful succession management planning, ensuring that strategies, activities and programs are in place that enable our leadership to make better decisions about current and future staff, and align talent to an overall growth strategy.

# Retirements

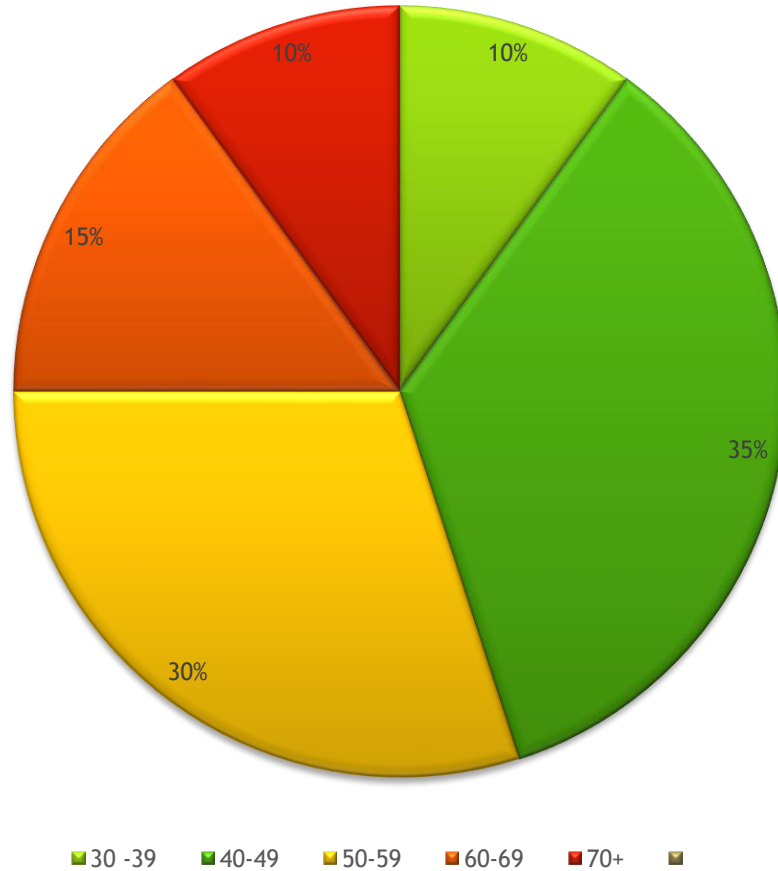
Approximately 55 percent of TBAE employees will be eligible to retire between FY2020 and FY2027. Forty-five percent are eligible to retire at the end of FY2033.



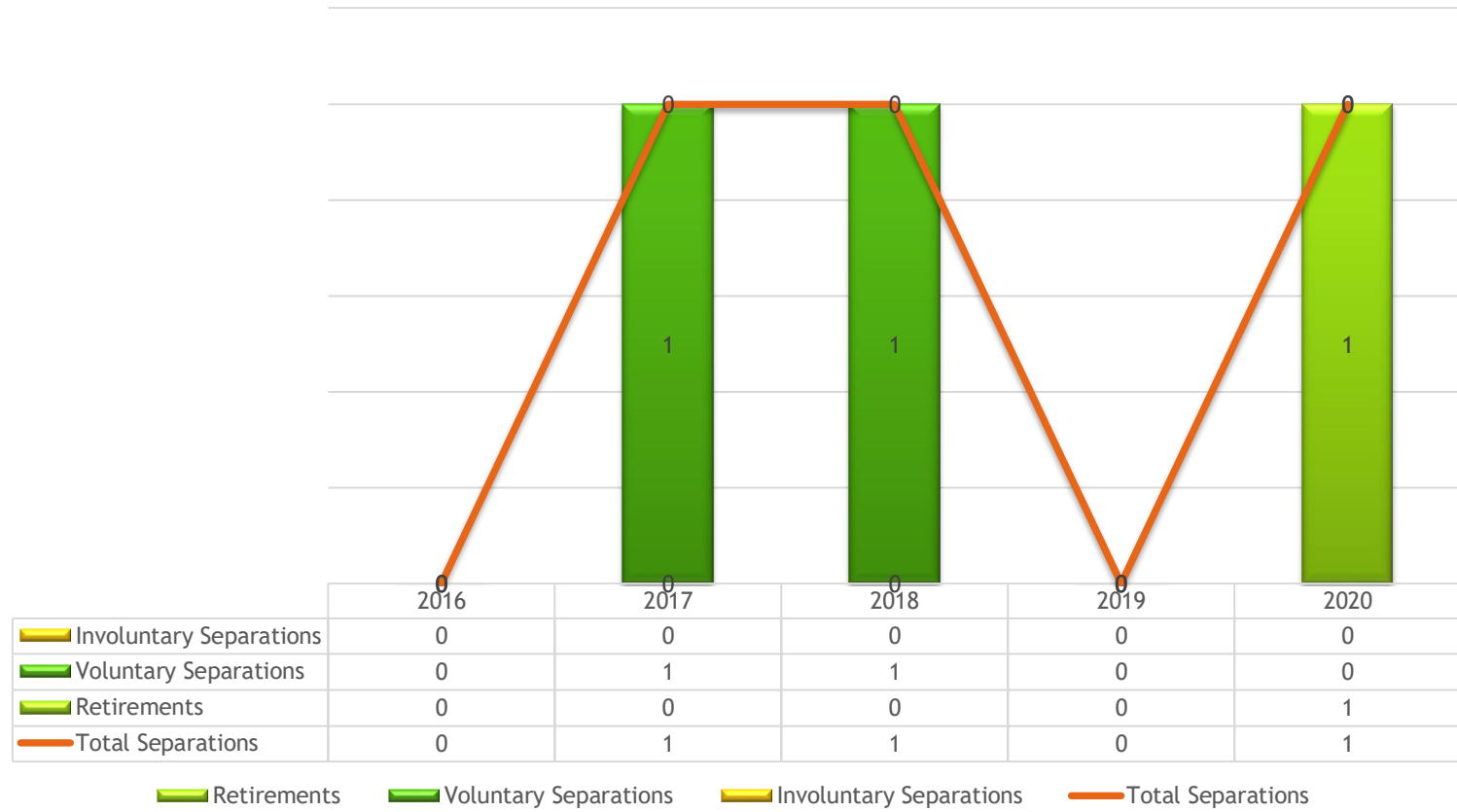
■ FY 2021   ■ FY 2022 to FY 2027   ■ FY 2028 to 2032   ■ FY 2033 and beyond

# Age

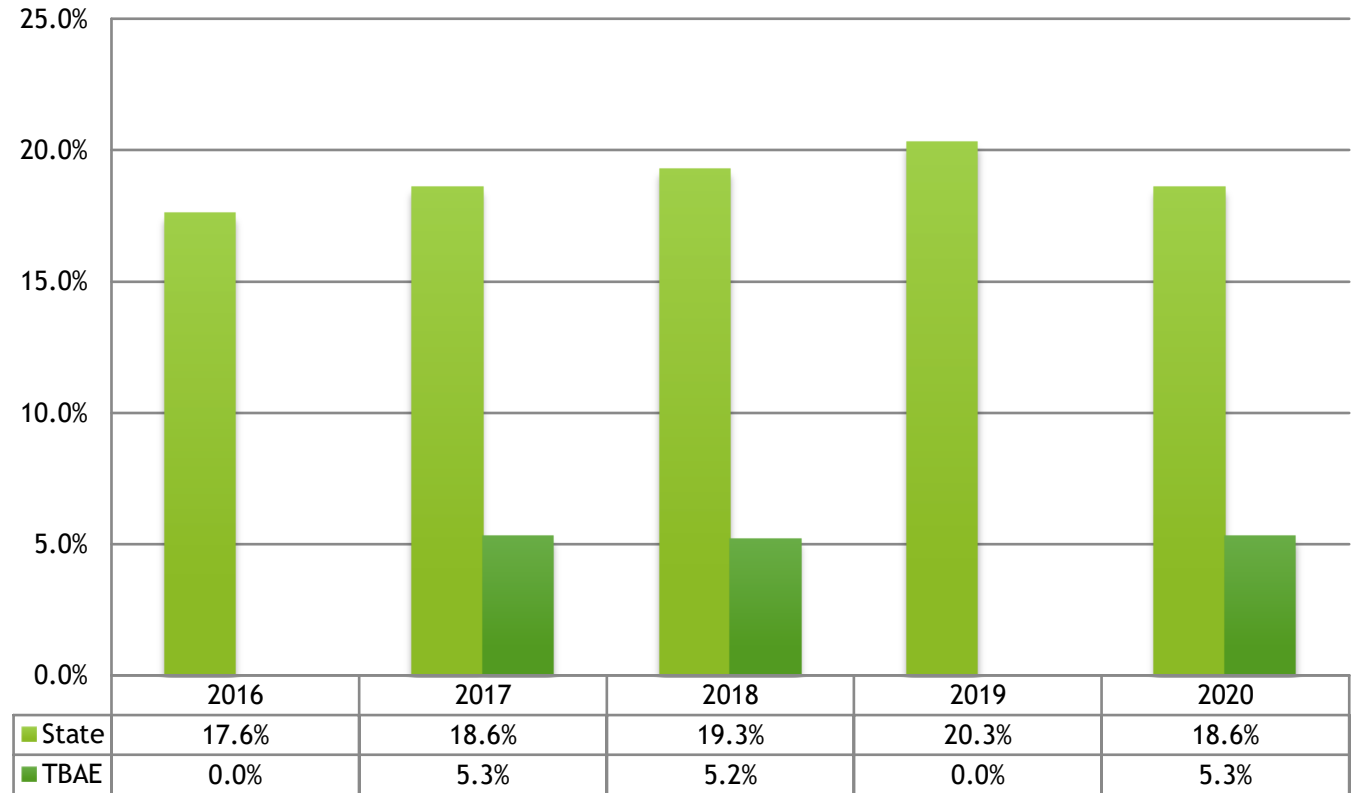
Due to TBAE's small workforce and limited number of separations and retirements, the workforce is older.



# Separations by Type



# Turnover Rate





# Human Resource Management

## Functional Areas

### Employment

- Recruitment
- Selection
- Placement
- Orientation & Onboarding
- Employee Relations
- Benefits
- Exit Interviews

### Compensation Management

- Job/Position evaluation/classification
- Compensation & Benefits
- Incentives – Merit and quarterly

### Employee Relations

- Workforce Analysis
- Employee Engagement & Retention
- Survey of Employee Engagement (SEE)

### State Emergency Disaster Preparedness and Continuity of Operations Plan (COOP)

### Risk Management

### Texas Workforce Commission

- Civil Rights/EEOC/Workers' Compensation

## Regulatory References

The Survey of Employee Engagement (SEE) results distributed biannually to Board

Agency COOP Plan

Agency Risk Management Plan

Employee Handbook

# Human Resource Management Cont'd

## Functional Areas

- ▶ CAPPS Reports
  - Active Employee Report
  - Active Position Report
  - Audit- Position Exceptions
  - Employees on LOA
  - ERS Inbound Report
  - ERS/CAPPS Insurance Reconciliation Report
  - FMLA/Parental Leave History Report
  - FTE Information Report
  - Rehire Report
  - List - Employee Comp Changes
  - Management/Staff Ratio Report
  - New Hires and Transfers Report
  - Notification of Termination (Letter)
  - Notification of Termination (Report)
  - Pay Impacting Forms for MON
  - Pay Impacting Forms for SMI
  - Personnel Changes Report
  - Staffing Forecast Report
  - TX FMLA ER Insurance Report

*The result of these reports is a single source of state human resources/payroll information that maximizes state agencies' ability to:*

- *Manage operations efficiently*
- *Minimize conflicting data*
- *Provide decision-makers with in-depth, accurate and timely financial/human resources (HR)/ payroll information*

## Policy/Statutory References

### ▶ What is CAPPS?

The Centralized Accounting and Payroll/Personnel System or CAPPS is the official name of the statewide Enterprise Resource Planning (ERP) system.

- CAPPS provides a single financials and human resources (HR)/payroll administration software solution for Texas state agencies.
- CAPPS allows aging and inefficient legacy systems to be replaced with an easy-to-use, easy-to-update system that can be scaled to meet the needs of any agency regardless of complexity and size.
- Reporting is easier and more accurate with CAPPS. Agency functions are recorded in a common data language on an interconnected system that allows financial and HR/payroll departments to exchange information quickly, safely and reliably.

For information listed in this slide deck, contact:

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**Adoption of Proposed Amendments Relating to Continuing Education Requirements**  
**Repeal and Replacement of 22 Tex. Admin. Code §§ 1.69, 3.69, and 5.79, and Amendments**  
**to §§ 1.232, 3.232, and 5.242**

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**Background**

At the August Board meeting, staff provided training to the Board regarding the continuing education program. During that training, the executive director discussed a number of potential improvements for the Board’s continuing education rules. Following this discussion, the Board chair asked the executive director to develop draft amendments to the continuing education rules for consideration by the Board at the November meeting.

Due to the number of substantive changes and reorganization necessary to implement recommended changes, staff drafted versions of 22 Tex. Admin. Code §1.69, 3.69, and 5.79 that were intended to repeal and replace the current versions of those rules. Additionally, staff prepared draft amendments to §1.232, 3.232, and 5.242 for the Board’s consideration. These draft rules were considered by the Board at the November meeting, along with recommendations from the rules committee. After debate, the Board approved the draft rules, with changes, for proposal. The rules were published in the January 8, 2021 issue of the Texas Register (46 TexReg 253). No comments were received on the proposed rules. Staff recommends adoption of the proposed rules.

**Summary of Proposed Changes:**

*Calendar Year Compliance Period vs Birth Month Renewal Period*

Under current §§ 1.69, 3.69, and 5.79, registrants are required to complete at least 12 hours of qualifying continuing education program hours (CEPH) every calendar year. However, registrants certify the completion of these hours during annual renewal, which is due by the end of the registrant’s birth month. One result is that, if a registrant discovers at renewal that he or she did not complete CE in the previous calendar year, there is no suitable remedy for the failure at the time of renewal.

To address this issue, the proposed rules would allow registrants an opportunity, prior to renewal, to cure a failure to complete CE in the previous year. Under proposed subsection (h), a registrant who did not complete sufficient CE in the previous year would be allowed to attest to compliance and be considered compliant with continuing education requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year AND completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, the renewal application would be amended to allow a registrant to answer “no” about whether the registrant is compliant with CE requirements. A registrant who answers “no” would be automatically drawn into the CE audit process and assessed an administrative penalty for non-compliance, as applicable.

### Adjustment of Administrative Penalties and Elimination of “Make-Up” CE

Under current processes, the administrative penalties assessed for CE violations weigh varying levels of culpability depending on whether a registrant has completed CE and when. For example, the following administrative penalties are issued under common fact patterns (assuming the registrant did not complete CE in the previous calendar year):

- The registrant completed CE prior to renewal – the registrant is issued a \$500 administrative penalty for failure to timely complete CE.
- The registrant renewed without completing CE but then completed CE after renewal – the registrant is issued a \$700 for submitting a false certification of CE compliance.
- The registrant renewed but did not complete any CE before or after renewal – the registrant is issued a \$700 administrative penalty for submitting a false certification of CE compliance. Additionally, if the registrant does not complete “make-up” CE after the audit, the registrant would be subject to an additional \$500 penalty for failure to timely complete CE.

The difference in these administrative penalties might be considered as a manner of rewarding earlier completion of “make-up” CE with decreased administrative penalties. However, under the proposed rules, registrants would essentially be given an opportunity to “make-up” for a CE noncompliance by completing deficient CE hours and the current year requirements prior to renewal. These registrants would be considered fully-compliant with CE requirements. Alternatively, a registrant could choose to admit to a failure to complete CE by answering “no” on the CE certification response and entering the audit process. Because the proposed rules and amended process would allow registrants an opportunity to either cure previous failures or honestly admit to such failure prior to renewal, the proposed rules do not authorize post-renewal or post-audit make-up CE, which is allowed under the current rules. Additionally, the proposed rules would adjust the amount of administrative penalties that are appropriate for violations of CE requirements. Under the proposed rules, the administrative penalty for failure to complete CE or failure to maintain CE documentation would be dependent on the number of hours for which a registrant is deficient, at a rate of \$100 per missing hour. A registrant who falsely certifies compliance with CE requirements would be subject to an additional \$500 administrative penalty.

Finally, the proposed rules would relocate the identification of administrative penalties for CE violations from §§ 1.232, 3.232, and 5.242 to §§ 1.69, 3.69, and 5.69. Relocating these provisions to the general continuing education rules will centralize relevant information and provide registrants a better opportunity to understand the potential ramifications of violating CE requirements.

### Incorporation of CE Definitions and Standards from National Organizations

Recently, NCARB<sup>1</sup> and AIA<sup>2</sup> collaborated to adopt shared standards for continuing education requirements. This rulemaking action is an opportunity to adopt those standards into the Board’s rules, as well as standards adopted by the landscape architect and interior designer professions. Proposed 1.69(a) and 3.69(a) incorporate the NCARB/AIA and LACES<sup>3</sup> CE categories and definitions for “health, safety and welfare” into the Board’s rules. Additionally, while the IDCEC<sup>4</sup> continuing education standards do not include specific categories of CE, that organization’s definition of “health safety and welfare” has been incorporated into proposed 5.79(a). Additionally, the proposed rules require that at least 45 minutes of every hour of CEPH directly relate to Health, Safety, or Welfare. This is consistent with a common requirement across NCARB, AIA, LACES, and IDCEC.

### Other Changes

- The current rules often reference “registration period” when addressing continuing education exemptions and carryover. Since continuing education compliance is measured by calendar year rather than registration period, these references have been replaced with “calendar year” throughout the proposed rules.
- Previously, some registrants have expressed confusion about whether certain continuing education activities are properly considered structured course credit or self-directed study. Therefore, definitions of these terms have been added to the proposed rules, and a few common examples of continuing education activities are expressly identified as one or the other.
- The proposed rules would allow a registrant to claim self-directed CE credit for hours spent in professional service to the general public through educational outreach activities. This would be a counterpart to a similar provision adopted by the Texas Board of Professional Engineers and Land Surveyors.
- The proposed rules would modify a current CE exemption that is available to a registrant who is registered in another jurisdiction and satisfies that jurisdiction’s CE requirements. Under current rules, the exemption is available if the other jurisdiction has registration requirements that are “substantially equivalent” to Texas requirements. However, equivalence between initial licensing standards is of little relevance in determining whether to grant an exemption for CE compliance. After a recommendation from the rules committee and discussion by the Board at the November meeting, the proposed amendment would instead allow an exemption if the registrant satisfies another jurisdiction’s CE requirements that are substantially equivalent to Texas CE requirements. Additionally, regardless of whether a registrant claims this exemption, the proposed rule would require

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<sup>1</sup> National Council of Architectural Registration Boards

<sup>2</sup> American Institute of Architects

<sup>3</sup> Landscape Architect Continuing Education System

<sup>4</sup> International Design Continuing Education Council

the registrant to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design, pursuant to generally-applicable requirements for Texas registrants. Under the current rule, registrants claiming the exemption are only required to complete the sustainable-design requirement.

- Under the current rules, a registrant who completes college or university credit courses addressing architectural, landscape architectural, or interior design subjects, as applicable, is entitled to one hour of continuing education credit per semester or quarter credit hour. At the November meeting, staff requested feedback from the Board about whether this was an appropriate measure of equivalency. After considering the recommendation of the rules committee, the Board voted to retain this provision without changes in the proposed rules.

Copies of proposed rules 1.69, 1.232, 3.69, 3.232, 5.69, and 5.242 are attached to this summary for the Board's consideration.

**Staff's Recommendation:**

Staff recommends that the Board approve the repeal and replacement of 22 Tex. Admin. Code §§ 1.69, 3.69, and 5.79, and proposed amendments to §1.232, 3.232 and 5.242, for final adoption.

NOTE: If approved for adoption, this rulemaking action would constitute a full repeal and replace of the current rule.

§1.69. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas--The following are the Approved Subject Areas for qualifying continuing education:

(A) Construction and Evaluation--Areas related to construction contract administration and post-occupancy evaluation of projects. Acceptable topics include, but are not limited to: Construction Contract Administration; Bidding and Negotiation; Post Occupancy Evaluation (POE); and Building Commissioning.

(B) Practice Management--areas related to the management of architectural practice and the details of running a business. Acceptable topics include, but are not limited to: Applicable Laws and Regulations; Ethics; Insurance to Protect Owner and Public; Business Management; Risk Management; Information Management; Design for Community Needs; and Supervisor Training.

(C) Programming and Analysis--Areas related to the evaluation of project requirements, constraints, and opportunities. Acceptable topics include, but are not limited to: Land-Use Analysis; Programming; Site Selection; Historic Preservation; Adaptive Reuse; Codes, Regulations, and Standards; Natural Resources; Environmental Impact and Ecosystem Risk Assessment; Hazardous Materials; Resilience to Natural and Human Impacts; Life Safety; and Feasibility Studies.

(D) Project Development and Documentation--Areas related to the integration and documentation of building systems, material selection, and material assemblies into a project. Acceptable topics include, but are not limited to: Construction Documents; Materials and Assemblies; and Fixtures, Furnishings, & Equipment.

(E) Project Management--areas related to the management of architectural projects through execution. Acceptable topics include, but are not limited to: Project Delivery Methods; Contract Negotiation; Pre-Design Services; Site and Soils Analysis; Consultant Management; Project Scheduling; Quality Control (QA/QC); Economic Assessment; and Value Engineering.

(F) Project Planning and Design--areas related to the preliminary design of sites and buildings. Acceptable topics include, but are not limited to: Building Systems; Urban Planning; Master Planning; Building Design; Site Design; Safety and Security Measures; Impacts, Adaptation and Mitigation of a Changing Climate; Energy Efficiency and Positive Energy Design; Sustainability; Indoor Air Quality; Ergonomics; Lighting; Acoustics; Accessibility; Construction Systems; and Budget Development.

(2) Health, Safety, or Welfare--Those aspects of professional practice that improve the physical, emotional, and social well-being of occupants, users, and any others affected by buildings and sites; those aspects of professional practice that protect occupants, users, and any others affected by buildings or sites from harm; and those aspects of professional practice that

**Commented [LB1]:** The Approved Subject Areas and definitions are drawn from the NCARB and AIA continuing education standards, which also correspond with the six divisions of the ARE. The “acceptable topics” are drawn from the NCARB continuing education guidelines.



enable equitable access, elevate the human experience, encourage social interaction, and benefit the environment.

**Commented [LB2]:** The updated definitions of health, safety, and welfare are drawn from the AIA and NCARB continuing education standards.

(3) Structured Course Study--Courses of study relevant to the Practice of Architecture, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Architect by the provider.

**Commented [LB3]:** This definition is partially taken from the NCARB definition for "Structured educational activities," modified to reflect TBAE precedent that a registrant must possess a certificate or other record of attendance in order to receive structured course credit.

(4) Self-Directed Study--Time spent by an Architect developing knowledge and skills relevant to the Practice of Architecture that does not qualify as Structured Course Study.

(b) During each calendar year between January 1 and December 31, an Architect shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, or Welfare.

(c) Of the 12 qualifying CEPH, each Architect shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Architect shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, or Welfare.

**Commented [LB4]:** Under the current rule, "One continuing education program hour equals a minimum of 50 minutes of actual course time." The amended rule would implement the AIA and NCARB CE guidelines that 75% of content and instruction time must be devoted to HSW.

(2) Examples of Structured Course Study include the following:

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

(B) The completion of college or university credit courses addressing architectural subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

**Commented [LB5]:** Amended (d)(2) and (e) utilize separate lists to identify which continuing education activities may be claimed as structured course study, and which are considered self-directed study. Under the current rule, these examples are listed together, without identifying which are considered structured course credit or self-directed study. This has caused confusion for some registrants.

(e) Of the 12 qualifying CEPH, each Architect may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

**Commented [LB6]:** Pursuant to committee and Board deliberations at the November meetings, the proposed rule would maintain the standard that each semester or credit hour is equivalent to one CEPH.

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the Practice of Architecture but does not qualify as Structured Course Study;

(2) Time spent in architectural research for publication or formal presentation to the profession or public;

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

**Commented [LB7]:** This proposed amendment is based on a similar provision adopted by the Texas Board of Professional Engineers and Land Surveyors.

(4) Time spent preparing to teach or teaching architectural courses. An Architect may not claim credit for preparing for or teaching the same course more than once; and

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

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

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

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

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

(4) An Architect who has an active architectural registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Architect satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Architect shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

**Commented [LB8]:** Under the current rule, an architect may claim an exemption from Texas CE requirements by satisfying CE requirements in another jurisdiction, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. After a recommendation from the committee and discussion by the Board at the November meeting, the proposed amendment would instead allow an exemption if the registrant satisfies another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, regardless of whether the registrant claims this exemption, the proposed rule would require the registrant to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design, pursuant to generally-applicable requirements for Texas registrants. Under the current rule, registrants claiming the exemption are only required to complete the sustainable-design requirement.

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

(g) An Architect shall maintain a detailed record of the Architect's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, an Architect shall complete an attestation regarding the Architect's compliance with minimum continuing education requirements. An

Architect may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Architect fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

(2) The Architect failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Architect:

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the minimum continuing education program requirements.

(1) Board staff will review an Architect's response to such a request to determine whether the Architect is in compliance with this Section.

(2) If an Architect fails to provide acceptable documentation of compliance within 30 days of a request, the Architect will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of \$100 for every hour of claimed continuing education for which an Architect is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of \$250 per failure.

**Commented [LB9]:** Under the Board's renewal procedures, a registrant is required to certify compliance with CE requirements at the time of renewal. However, the deadline for completing CE is December 31 of the previous year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. The proposed amendment would allow such a registrant to maintain compliance by completing enough CE (prior to renewal) to correct any deficiency in the prior year and meet the current year obligation.

**Commented [LB10]:** Under the current rule, a registrant is allowed to complete "makeup" CE following the determination of a CE deficiency. If make-up is completed, the registrant is eligible for a decreased administrative penalty. Since the proposed amendment in subsection (h) would allow a registrant to remedy a previous year's deficiency prior to renewal, the proposed amendment does not include a post-renewal opportunity for make-up.

**Commented [LB11]:** The proposed rule would incorporate the recommended penalties for CE violations within the CE rule. Under the current rules, administrative penalties for CE violations are identified in 1.232.

Additionally, the proposed rule would modify the amounts of administrative penalties. Under current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of \$500 and \$700, respectively. Under proposed §1.69(j), a registrant would be subject to an administrative penalty of \$100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a \$500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from \$700 in the current rule). Proposed §1.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §1.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the overall amount collected in administrative penalties for CE violations is not expected to differ significantly from collections under the current rule.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If an Architect was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §1.232 of the Board's rules.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If an Architect has committed multiple violations, the Architect shall be subject to a separate administrative penalty for each violation.

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

(n) An Architect may receive credit for up to 24 CEPE earned during any single calendar year. A maximum of 12 CEPE that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

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

*RULE §1.232 Board Responsibilities*

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

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

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

(d) If a party submits proposed findings of fact or conclusions of law, the proposal for decision shall include a ruling on each proposed finding or conclusion.

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

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

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

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

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

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

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order

may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

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

(Attached Graphic)

Figure: 22 TAC §1.232(j)		
Violation	Rule or Statutory Citation	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty
Unlawful practice of architecture while registration is on emeritus status	§1.67(b)	Administrative penalty
Practice of architecture while registration is inactive	§1.68 or §1.82(b)	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty[; suspension, or both]
Failure to timely complete required continuing education program hours	§1.69[(b)]	Administrative penalty[ of \$500; subject to higher penalties or suspension for second or subsequent offenses]
Falsely reporting compliance with mandatory continuing education requirements	§1.69[(g)]	Administrative penalty[-of \$700; subject to higher penalties or suspension for second or subsequent offenses]
Failure to maintain a detailed record of continuing education activities	§1.69[(g)(1)]	Administrative penalty[-of \$700; subject to higher penalties for second or subsequent offenses]
Use of non-compliant seal by registrant	§1.102	Administrative penalty

Failure to seal or sign documents	§1.103 §1.105 §1.122(c),(e)	Administrative penalty
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§1.103(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§1.104(a) §1.122(c) or (e)	Administrative penalty and either suspension or revocation
Failure to take reasonable steps to notify sealing Architect of intent to modify that architect’s sealed documents	§1.104(d)	Administrative penalty
Failure to indicate modifications or additions to a document prepared by another Architect	§1.104(b) and (d)	Administrative penalty, suspension, or both
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§1.104(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§1.104(b)	Administrative penalty, suspension, or both
Violation of requirements regarding prototypical design	§1.105	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	Administrative penalty, and either suspension or revocation

Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	Administrative penalty, and either suspension or revocation
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture	§1.124(c)	Administrative penalty, suspension, or both
Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered	§1.124 §1.146(a)(2)(B)	Administrative penalty
Gross incompetency	Tex. Occ. Code §1051.752(4), §1.142	Administrative penalty, and either suspension or revocation
Recklessness	Tex. Occ. Code §1051.752(5) §1.143	Administrative penalty, and either suspension or revocation
Dishonest practice	Tex. Occ. Code §1051.752(6)§1.144(a) or (b)	Administrative penalty, and either suspension or revocation
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§1.144(c)	Administrative penalty and either suspension or revocation, and payment of restitution
Conflict of interest	§1.145	Administrative penalty and either suspension or revocation
Participating in a plan, scheme or arrangement to violate the Act or rules of the Board	§1.146(a)	Administrative penalty, suspension, and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal	§1.146(b), (c)	Administrative penalty
Submission or solicitation of a competitive bid or direct or indirect disclosure of fee information in violation of the Board's Rule implementing the Professional Services Procurement Act	§1.147	Administrative penalty and either suspension or revocation



Unauthorized practice or use of title "architect"	§1.123 §1.148	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration
Criminal conviction	§1.149	Suspension or revocation
Gross incompetence caused by substance abuse	§1.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use title "architect", unlawful practice, or criminal convictions	§1.148 §1.149 §1.151	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1051.752(2), §1.170	Administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty
Giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1051.752(7)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1051.752(8)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation
Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1051.752(9)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Unregistered individual engaging in construction observation for a nonexempt building	§1.217	Administrative penalty, denial of application, denial of reapplication for up to five

		years, and/or probationary initial registration
Failure to report course of action likely to have material adverse effect on safe use of building or failure to refuse to consent to the course of action	§1.216	Administrative penalty and either suspension or revocation

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent. If the Respondent has previously been subject to disciplinary action before the Board, more severe discipline may be imposed.

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

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

NOTE: If approved for adoption, this rulemaking action would constitute a full repeal and replace of the current rule.

§3.69. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas - The following are the Approved Subject Areas for qualifying continuing education:

(A) Building codes;

(B) Code of ethics;

(C) Codes, acts, laws, and regulations governing the practice of Landscape Architecture;

(D) Construction administration, including construction contracts;

(E) Construction documents;

(F) Design of environmental systems;

(G) Environmental process and analysis;

(H) Erosion control methods;

(I) Grading;

(J) Horticulture;

(K) Irrigation methods;

(L) Land planning and land use analysis;

(M) Landscape preservation, landscape restoration and adaptive reuse;

(N) Lateral forces;

(O) Natural hazards - impact of earthquake, hurricane, fire, or flood related to site design;

(P) Pedestrian and vehicular circulation;

(Q) Planting design;

(R) Resource conservation and management;

(S) Roadway design principles;

(T) Site accessibility, including Americans with Disabilities Act standards for accessible site design;

(U) Site and soils analysis;

(V) Site design and engineering, including materials, methods, technologies, and applications;

(W) Site security and safety;

(X) Storm water management, surface and subsoil drainage;

(Y) Structural systems considerations;

(Z) Surveying methods and techniques as they affect Landscape Architecture;

(AA) Sustainable design, including techniques related to energy efficiency;

(BB) Use of site materials and methods of site construction;

(CC) Vegetative management;

(DD) Wetlands;

(EE) Zoning as it relates to the improvement and/or protection of the public health, safety, and welfare;

(FF) Other matters of law and ethics that contribute to the health, safety, and welfare of the public;

(2) Health, Safety, and Welfare - Subject matter applying to the principles of mathematical, physical, and social sciences in consultation, evaluation, planning, design (including, but not limited to the preparation and filing of plans, drawings, specifications, and other contract documents), and administration of contracts relative to projects principally directed at the functional and aesthetic use and preservation of land.

(3) Structured Course Study - Courses of study relevant to the practice of Landscape Architecture, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Landscape Architect by the provider.

(4) Self-Directed Study - Time spent by a Landscape Architect developing knowledge and skills relevant to the practice of Landscape Architecture that does not qualify as Structured Course Study.

**Commented [LB1]:** The Approved Subject Areas are drawn from the Landscape Architecture Continuing Education System (LACES) standards.

**Commented [LB2]:** This definition of health, safety, and welfare is drawn from the LACES standards.

**Commented [LB3]:** This definition is partially taken from the NCARB definition for "Structured educational activities," modified to reflect TBAE precedent that a registrant must possess a certificate or other record of attendance in order to receive structured course credit.

(b) During each calendar year between January 1 and December 31, a Landscape Architect shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, and Welfare.

(c) Of the 12 qualifying CEPH, each Landscape Architect shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Landscape Architect shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, and Welfare.

(2) Examples of Structured Course Study include the following:

(A) Attendance at continuing education courses dealing with technical landscape architectural subjects related to the Landscape Architect's profession, ethical business practices, or new technology.

(B) The completion of college or university credit courses addressing landscape architectural subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

(e) Of the 12 qualifying CEPH, each Landscape Architect may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the practice of Landscape Architecture but does not qualify as Structured Course Study;

(2) Time spent in landscape architectural research for publication or formal presentation to the profession or public;

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

(4) Time spent preparing to teach or teaching landscape architectural courses. A Landscape Architect may not claim credit for preparing for or teaching the same course more than once; and

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

**Commented [LB4]:** Under the current rule, "One continuing education program hour equals a minimum of 50 minutes of actual course time." This change would implement the LACES guidelines that seventy-five percent of the course material must address HSW.

**Commented [LB5]:** Amended (d)(2) and (e) utilize separate lists to identify which continuing education activities may be claimed as structured course study, and which are considered self-directed study. Under the current rule, these examples are listed together, without identifying which are considered structured course credit or self-directed study. This has caused confusion for some registrants.

**Commented [LB6]:** Pursuant to committee and Board deliberations at the November meetings, the proposed rule would maintain the standard that each semester or credit hour is equivalent to one CEPH.

**Commented [LB7]:** This proposed amendment is based on a similar provision adopted by the Texas Board of Professional Engineers and Land Surveyors.

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

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

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

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

(4) A Landscape Architect who has an active landscape architectural registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Landscape Architect satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Landscape Architect shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

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

(g) A Landscape Architect shall maintain a detailed record of the Landscape Architect's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, a Landscape Architect shall complete an attestation regarding the Landscape Architect's compliance with minimum continuing education requirements. A Landscape Architect may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Landscape Architect fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

(2) The Landscape Architect failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Landscape Architect:

**Commented [LB8]:** Under the current rule, a landscape architect may claim an exemption from Texas CE requirements by satisfying CE requirements in another jurisdiction, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. After a recommendation from the committee and discussion by the Board at the November meeting, the proposed amendment would instead allow an exemption if the registrant satisfies another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, regardless of whether the registrant claims this exemption, the proposed rule would require the registrant to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design, pursuant to generally-applicable requirements for Texas registrants. Under the current rule, registrants claiming the exemption are only required to complete the sustainable-design requirement.

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require a Landscape Architect to produce documentation to prove that the Landscape Architect has complied with the minimum continuing education program requirements.

(1) Board staff will review a Landscape Architect's response to such a request to determine whether the Landscape Architect is in compliance with this Section.

(2) If a Landscape Architect fails to provide acceptable documentation of compliance within 30 days of a request, the Landscape Architect will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by a Landscape Architect for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of \$100 for every hour of claimed continuing education for which a Landscape Architect is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of \$250 per failure.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If a Landscape Architect was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §3.232 of the Board's rules.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If a Landscape

**Commented [LB9]:** Under the Board's renewal procedures, a registrant is required to certify compliance with CE requirements at the time of renewal. However, the deadline for completing CE is December 31 of the previous year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. The proposed amendment would allow such a registrant to maintain compliance by completing enough CE (prior to renewal) to correct any deficiency in the prior year and meet the current year obligation.

**Commented [LB10]:** Under the current rule, a registrant is allowed to complete "makeup" CE following the determination of a CE deficiency. If make-up is completed, the registrant is eligible for a decreased administrative penalty. Since the proposed amendment in subsection (h) would allow a registrant to remedy a previous year's deficiency prior to renewal, the proposed amendment does not include a post-renewal opportunity for make-up.

**Commented [LB11]:** The proposed rule would incorporate the recommended penalties for CE violations within the CE rule. Under the current rules, administrative penalties for CE violations are identified in 3.232.

Additionally, the proposed rule would modify the amounts of administrative penalties. Under current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of \$500 and \$700, respectively. Under proposed §3.69(j), a registrant would be subject to an administrative penalty of \$100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a \$500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from \$700 in the current rule). Proposed §3.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §3.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the overall amount collected in administrative penalties for CE violations is not expected to differ significantly from collections under the current rule.

Architect has committed multiple violations, the Landscape Architect shall be subject to a separate administrative penalty for each violation.

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

(n) A Landscape Architect may receive credit for up to 24 CEPEH earned during any single calendar year. A maximum of 12 CEPEH that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

(o) As the term is defined in §3.29(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPEH requirements.



*RULE §3.232 Board Responsibilities*

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

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

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

(d) If a party submits proposed findings of fact or conclusions of law, the proposal for decision shall include a ruling on each proposed finding or conclusion.

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

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

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

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

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

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

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order

may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

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

(Attached Graphic)

Figure: 22 TAC §3.232(j)

<b>Violation</b>	<b>Rule or Statutory Citation</b>	<b>Recommended Penalty</b>
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§3.62	Administrative penalty
Unlawful practice of landscape architecture while registration is on emeritus status	§3.67(b)	Administrative penalty
Practice of landscape architecture while registration is inactive or expired	§3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§3.69	Administrative penalty[, suspension, or both]
Failure to timely complete required continuing education program hours	§3.69[(b)]	Administrative penalty[-of \$500; subject to higher penalties or suspension for second or subsequent offenses]
Falsely reporting compliance with mandatory continuing education requirements	§3.69[(g)]	Administrative penalty[-of \$700; subject to higher penalties or suspension for second or subsequent offenses]
Failure to maintain a detailed record of continuing education activities	§3.69[(g)(1)]	Administrative penalty[-of \$700; subject to higher penalties for second or subsequent offenses]
Use of non-compliant seal by registrant	§3.102	Administrative penalty

Failure to seal or sign documents	§3.103 §3.105 §3.122(c), (e)	Administrative penalty
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§3.103(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§3.104(a) and (b) §3.122(c) and (e)	Administrative penalty and either suspension or revocation
Failure to take reasonable steps to notify sealing Landscape Architect of intent to modify that Landscape Architect’s sealed documents	§3.104(d)	Administrative penalty
Failure to indicate modifications or additions to a document prepared by another Landscape Architect	§3.104(e)	Administrative penalty, suspension, or both
Removal of seal after issuance of documents	§3.104(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§3.103(g) §3.105(b) §3.122(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§3.104(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§3.104(b)	Administrative penalty, suspension, or both
Violation of requirements regarding prototypical design	§3.105	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§3.106	Administrative penalty
Failure to report a course of action taken against the landscape architect’s advice as required	§3.106(d)	Administrative penalty and either suspension or revocation
Failure to enter into a written agreement of association when required	§3.122	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§3.122(c)	Administrative penalty, and either suspension or revocation

Failure to exercise Responsible Charge over the preparation of a document as required	§3.122(e)	Administrative penalty, and either suspension or revocation
Failure of a firm, business entity, or association to register	§3.124(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide landscape architecture	§3.124(c)	Administrative penalty, suspension, or both
Offering or rendering Landscape Architecture by and through a firm, business entity or association that is not duly registered	§3.124 §3.146(a)(2)(B)	Administrative penalty
Gross incompetency	Tex. Occ. Code §1052.252(7) §3.142	Administrative penalty and either suspension or revocation
Recklessness	Tex. Occ. Code §1052.252(7) §3.143	Administrative penalty and either suspension or revocation
Dishonest practice	Tex. Occ. Code §1052.252(9) §3.144(a), (b)	Administrative penalty and either suspension or revocation
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly-funded work	§3.144(c)	Administrative penalty, suspension, and/or revocation, and payment of restitution
Conflict of interest	§3.145	Administrative penalty and either suspension or revocation
Participating in a plans, scheme or arrangement to violate the Act or the rules of the Board	§3.146(a)	Administrative penalty, suspension and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused landscape architectural seal	§3.146(b), (c)	Administrative penalty
Unauthorized practice or use of title "landscape architect"	§3.123 §3.148	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Criminal conviction	§3.149	Suspension or revocation

Gross incompetence caused by substance abuse	§3.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use of title “landscape architect”, unlawful practice, or criminal convictions	§3.148 §3.149 §3.151	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1052.252(8) §3.170	Administrative penalty
Failure to respond to a Board inquiry	§3.171	Administrative penalty
Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1052.252(2) or (3)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1052.252(4)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Use of the term “engineer,” “professional engineer,” or related term or otherwise creating the impression that one is authorized to practice engineering unless the person is registered under Occupations Code Chapter 1001	Tex. Occ. Code §1052.252(5)	Administrative Penalty
Use of the term “surveyor” or related term or otherwise creating the impression that one is authorized to practice surveying unless the person is registered under Occupations Code Chapter 1071	Tex. Occ. Code §1052.252(6)	Administrative Penalty
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1052.252(10)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent. If the Respondent has previously been subject to disciplinary action before the Board, more severe discipline may be imposed.

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

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §3.177 shall be applied to determine the amount of the administrative penalty.

NOTE: If approved for adoption, this rulemaking action would constitute a full repeal and replace of the current rule.

§5.79. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas - The following are the Approved Subject Areas for qualifying continuing education:

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

(B) Technical: structural, mechanical, electrical, communications, fire protection, controls.

(C) Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(D) Occupant Comfort: air quality, lighting, acoustics, ergonomics.

(E) Materials and Methods: building systems, products, finishes, furnishings, equipment.

(F) Preservations: historic, reuse, adaptation.

(G) Pre-design: programming, project analysis, survey of existing conditions, including the materials and configuration of the interior space of a project.

(H) Design: interior building design, interior specifications, accessibility, safety, and security measures.

(I) Construction Documents: drawings, specifications and other materials within the definition of the term "Construction Document".

(J) Construction Administration: contract, bidding, and contract negotiations.

(2) Health, Safety, or Welfare - Continuing education course content covering knowledge and practice of interior design that is focused on protection of the public and the environment.

(3) Structured Course Study - Courses of study relevant to the practice of Interior Design, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Registered Interior Designer by the provider.

(4) Self-Directed Study - Time spent by a Registered Interior Designer developing knowledge and skills relevant to the practice of Interior Design that does not qualify as Structured Course Study.

**Commented [LB1]:** These subject areas are retained from the Board's current continuing education rule for registered interior designers.

**Commented [LB2]:** This definition of health, safety, and welfare is drawn from the International Design Continuing Education Council (IDCEC) continuing education standards.

**Commented [LB3]:** This definition is partially taken from the NCARB definition for "Structured educational activities," modified to reflect TBAE precedent that a registrant must possess a certificate or other record of attendance in order to receive structured course credit.

(b) During each calendar year between January 1 and December 31, a Registered Interior Designer shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, or Welfare.

(c) Of the 12 qualifying CEPH, each Registered Interior Designer shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Registered Interior Designer shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, or Welfare.

(2) Examples of Structured Course Study include the following:

(A) Attendance at continuing education courses dealing with technical Interior Design subjects related to the Registered Interior Designer's profession, ethical business practices, or new technology.

(B) The completion of college or university credit courses addressing Interior Design subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

(e) Of the 12 qualifying CEPH, each Registered Interior Designer may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the practice of Interior Design but does not qualify as Structured Course Study;

(2) Time spent in Interior Design research for publication or formal presentation to the profession or public;

(3) Hours spent in professional service to the general public that draws upon the Registered Interior Designer's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, code study committees, or educational outreach activities;

(4) Time spent preparing to teach or teaching Interior Design courses. A Registered Interior Designer may not claim credit for preparing for or teaching the same course more than once; and

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

**Commented [LB4]:** Under the current rule, "One continuing education program hour equals a minimum of 50 minutes of actual course time." This change would implement the IDCEC requirement that minimum of 75% of an HSW CEU's content covers knowledge and practice of interior design that is focused on protection of the public and the environment.

**Commented [LB5]:** Amended (d)(2) and (e) utilize separate lists to identify which continuing education activities may be claimed as structured course study, and which are considered self-directed study. Under the current rule, these examples are listed together, without identifying which are considered structured course credit or self-directed study. This has caused confusion for some registrants.

**Commented [LB6]:** Pursuant to committee and Board deliberations at the November meetings, the proposed rule would maintain the standard that each semester or credit hour is equivalent to one CEPH.

**Commented [LB7]:** This proposed amendment is based on a similar provision adopted by the Texas Board of Professional Engineers and Land Surveyors.



(f) A Registered Interior Designer may be exempt from continuing education requirements for any of the following reasons:

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

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

(3) A Registered Interior Designer who is not a full-time member of the Armed Forces shall be exempt for any calendar year during which the Registered Interior Designer serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) A Registered Interior Designer who has an active interior design registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Registered Interior Designer satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Registered Interior Designer shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

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

(g) A Registered Interior Designer shall maintain a detailed record of the Registered Interior Designer's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, a Registered Interior Designer shall complete an attestation regarding the Registered Interior Designer's compliance with minimum continuing education requirements. A Registered Interior Designer may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Registered Interior Designer fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

**Commented [LB8]:** Under the current rule, a registered interior designer may claim an exemption from Texas CE requirements by satisfying CE requirements in another jurisdiction, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. After a recommendation from the committee and discussion by the Board at the November meeting, the proposed amendment would instead allow an exemption if the registrant satisfies another jurisdiction's CE requirements that are substantially equivalent to Texas CE requirements. Additionally, regardless of whether the registrant claims this exemption, the proposed rule would require the registrant to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design, pursuant to generally-applicable requirements for Texas registrants. Under the current rule, registrants claiming the exemption are only required to complete the sustainable-design requirement.

(2) The Registered Interior Designer failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Registered Interior Designer:

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require a Registered Interior Designer to produce documentation to prove that the Registered Interior Designer has complied with the minimum continuing education program requirements.

(1) Board staff will review a Registered Interior Designer's response to such a request to determine whether the Registered Interior Designer is in compliance with this Section.

(2) If a Registered Interior Designer fails to provide acceptable documentation of compliance within 30 days of a request, the Registered Interior Designer will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by a Registered Interior Designer for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of \$100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of \$100 for every hour of claimed continuing education for which a Registered Interior Designer is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of \$250 per failure.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If a Registered Interior Designer was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §5.242 of the Board's rules.

**Commented [LB9]:** Under the Board's renewal procedures, a registrant is required to certify compliance with CE requirements at the time of renewal. However, the deadline for completing CE is December 31 of the previous year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. The proposed amendment would allow such a registrant to maintain compliance by completing enough CE (prior to renewal) to correct any deficiency in the prior year and meet the current year obligation.

**Commented [LB10]:** Under the current rule, a registrant is allowed to complete "makeup" CE following the determination of a CE deficiency. If make-up is completed, the registrant is eligible for a decreased administrative penalty. Since the proposed amendment in subsection (h) would allow a registrant to remedy a previous year's deficiency prior to renewal, the proposed amendment does not include a post-renewal opportunity for make-up.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If a Registered Interior Designer has committed multiple violations, the Registered Interior Designer shall be subject to a separate administrative penalty for each violation.

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

(n) A Registered Interior Designer may receive credit for up to 24 CEPE earned during any single calendar year. A maximum of 12 CEPE that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

(o) As the term is defined in §5.39(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPE requirements.

**Commented [LB11]:** The proposed rule would incorporate the recommended penalties for CE violations within the CE rule. Under the current rules, administrative penalties for CE violations are identified in 5.242.

Additionally, the proposed rule would modify the amounts of administrative penalties. Under current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of \$500 and \$700, respectively. Under proposed §5.79(j), a registrant would be subject to an administrative penalty of \$100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a \$500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from \$700 in the current rule). Proposed §5.79(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §5.79(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the overall amount collected in administrative penalties for CE violations is not expected to differ significantly from collections under the current rule.

*RULE §5.242 Board Responsibilities*

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of this chapter (relating to Disciplinary Action). However, if a Contested Case is not settled informally pursuant to Subchapter I of this chapter, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

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

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

(d) If a party submits proposed findings of fact or conclusions of law, the proposal for decision shall include a ruling on each proposed finding or conclusion.

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

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

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

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

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

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

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order

may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

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

(Attached Graphic)

Figure: 22 TAC §5.242(j)

<b>Violation</b>	<b>Rule or Statutory Citation</b>	<b>Recommended Penalty</b>
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§5.72	Administrative penalty
Using the title “Registered Interior Designer” while on emeritus status	§5.77(b)	Administrative penalty
Practice of Interior Design while registration is inactive or expired	§5.78 or §5.92(b)	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§5.79	Administrative penalty[ <del>or suspension</del> ]
Failure to timely complete required continuing education program hours	§5.79[(b)]	Administrative penalty[ <del>of \$500; subject to higher penalties or suspension for second or subsequent offenses</del> ]
Falsely reporting compliance with mandatory continuing education requirements	§5.79[(g)]	Administrative penalty[ <del>of \$700; subject to higher penalties for second or subsequent offenses</del> ]
Failure to maintain a detailed record of continuing education activities	§5.79[(g)(1)]	Administrative penalty[ <del>of \$700; subject to higher penalties for second or subsequent offenses</del> ]
Use of non-compliant seal by registrant	§5.112 §5.114(c)	Administrative penalty
Failure to sign or seal documents	§5.113 §5.132(c) and (e)	Administrative penalty

Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§5.113(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§5.114(a) and (b) §5.132(c) and (e)	Administrative penalty and either suspension or revocation
Failure to take reasonable steps to notify sealing Registered Interior Designer of intent to modify sealed documents	§5.114(d)	Administrative penalty
Failure to indicate modifications to or portion of document prepared by Registered Interior Designer	§5.114(b) and (d)	Administrative penalty, suspension, or both
Removal of seal after issuance of documents	§5.114(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§5.113(c) §5.132(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§5.114(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§5.115(b)	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§5.115(a)	Administrative penalty
Failure to report a course of action taken against the interior designer’s advice as required	§5.115(d)	Administrative penalty and either suspension or revocation
Failure to enter into a written agreement of association when required	§5.132	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§5.132(c)	Administrative penalty and either suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	§5.132(e)	Administrative penalty and either suspension or revocation
Failure of a firm, business entity, or association to register	§5.134(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association or upon loss of lawful	§5.134(c)	Administrative penalty

authority to use the title “registered interior designer”		
Representing an unregistered firm, business entity or association as a Registered Interior Designer firm	§5.134	Administrative penalty
Gross incompetency	§5.152	Administrative penalty and either suspension or revocation
Recklessness	§5.153	Administrative penalty and either suspension or revocation
Dishonest practice	§5.154(a), (c)	Administrative penalty and either suspension or revocation
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§5.154(b)	Administrative penalty and either suspension or revocation and payment of restitution
Conflict of interest	§5.155	Administrative penalty and either suspension or revocation
Participating in a plan, scheme, or arrangement to violate the Act or rules of the Board	§5.156(a)	Administrative penalty, suspension, and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen, or misused registered interior design seal	§5.156(b), (c)	Administrative penalty
Unauthorized practice or use of title "registered interior designer"	§5.133 §5.157	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactive registration
Criminal conviction	§5.158	Suspension or revocation
Gross incompetency caused by substance abuse	§5.159	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use of the title “registered interior designer,” unlawful practice or criminal convictions	§5.157 §5.158 §5.160	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1053.252(8) §5.180	Administrative penalty

Failure to respond to a Board inquiry	§5.181	Administrative penalty
Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1053.252(3) or (9)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Practicing in a manner detrimental to the public health, safety, or welfare	Tex. Occ. Code §1053.252(5)	Administrative penalty, suspension, or revocation
Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1053.252(10)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Advertising in a manner that tends to deceive or defraud the public	Tex. Occ. Code §1053.252(6)	Administrative penalty, suspension, or revocation
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1053.252(7)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent. If the Respondent has previously been subject to disciplinary action before the Board, more severe discipline may be imposed.

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

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §5.187 of this title (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.



**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.**

<b>Case Number:</b>	<b>015-21A</b>
<b>Respondent:</b>	<b>Steve Allen Cano</b>
<b>Location of Respondent:</b>	<b>Kingwood, Texas</b>
<b>Location of Project(s):</b>	<b>Houston, Texas</b>
<b>Nature of Violation:</b>	<b>Violation of Architectural Barriers Act (TDLR)</b>
<b>Instrument:</b>	<b>Report and Notice of Violation</b>

**Findings:**

- Steve Allen Cano (hereafter “Respondent”) is registered as an architect in Texas with registration number 13924.
- Previous History
  - On May 16, 2012, the Executive Director issued a Warning to the Respondent based on findings that the Respondent failed to timely submit plans to TDLR for accessibility review.
- On October 22, 2020, the Texas Board of Architectural Examiners (TBAE) received a referral from the Texas Department of Licensing and Regulation (TDLR) indicating that Respondent had failed to submit plans for a project known as “HMH North Campus Expansion-Looke Sanctuary” located in Houston, Texas, to TDLR for accessibility review within 20 days of issuance as required by Texas Government Code §469.102(b). The plans and specifications were issued on August 30, 2019 and were submitted to TDLR on March 24, 2020.

**Applicable Statutory Provisions and Rules:**

- By failing to submit plans and specifications on a project for accessibility review no later than 20 days after issuance, Respondent violated Texas Occupations Code §1051.752(2) and Board Rule 1.170(a).

**Action Recommended by Executive Director:**

- Enter an Order which adopts the findings of fact, conclusions of law, and recommended administrative penalty of **\$1,000** as set forth in the Report and Notice of Violation dated December 21, 2020.

**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: 118-20A**  
**Respondent: John J. Puhr III**  
**Location of Respondent: Austin, TX**  
**Location of Project(s): Austin, TX**  
**Instrument: Report and Notice of Violation**

**Findings:**

- John J. Puhr III (hereafter “Respondent”) is registered as an architect in Texas with registration number 21296.
- Respondent is the founder and owner of Root Architecture.
- On or about June 22, 2018, Respondent entered into a Contract for Architectural Services with Rachel and Dave Hollis with The Hollis Company. In part, Respondent contracted to provide services, including architectural services for complete interior renovation and non-structural exterior renovation of two existing commercial buildings located at 6900 and 6902 Scenic Brook Drive, Austin, Texas (Project). The scope of services itemized in the Contract for Architectural Services included the following requirements:
  - “Review of zoning, subdivision, and building code information to determine compatibility of property with development to Owner’s requirements.
  - Review existing information regarding topographic, tree, and utility service information for this site.
  - Discuss goals and space requirements for the scope of work. This includes preliminary review of requirements for site improvements and site plan approval.
  - Prepare change-of-use application for submittal to City of Austin. Preliminary meeting with COA indicates that no site plan correction will be required. Services related to submitting and coordinating any site plan correction will be billed as additional services and may require consultation with a civil engineer.
  - The following may be necessary to complete the pre-design phase (contracted separately by Client, if required):
    - o As-Built documentation of existing building.
    - o Topographic and Tree survey of the property.
    - o Hazardous materials or environmental studies.”
- On or about June 27, 2018, Respondent visited the Project site and observed that demolition was underway.
- On or about July 12, 2018 visited the Project site and observed that the interior had been substantially gutted.
- On September 12, 2018, Respondent issued a letter to the City of Austin Watershed Department in support of a building permit application for the Project. In the letter, the Respondent stated, “Regarding the existing buildings at 6900 and 6902 Scenic Brook Drive in Austin Texas, the requirements of Texas Senate Bill 509 have been followed

and in my professional opinion all parts of the building affected by the planned renovation do not contain asbestos. For the planned renovations, neither asbestos testing nor an asbestos survey should be required.” The Respondent did not explain in the letter that demolition had already occurred, that he had not reviewed any material safety data sheets and that he was unable to identify the materials present in the construction prior to demolition.

- At the time that he issued this letter, Respondent had not reviewed any material safety data sheets for the materials used in the original construction, subsequent renovations, or alterations of any part of the building affected by the planned renovation or demolition. Nor had the Respondent reviewed any asbestos surveys of the building previously conducted in accordance with Occupations Code Chapter 1954.
- On or about December 10, 2019, Respondent received a “Letter of Advisement” from the Texas Department of State Health Services, which found that Respondent’s September 12, 2108 letter had failed to “state that [he] had reviewed relevant material safety data sheets or previous asbestos surveys to make the determination that the parts of the building affected by the planned renovation do not contain asbestos.”

#### **Applicable Statutory Provisions and Rules:**

- Under Tex. Occ. Code §1051.752, a person is subject to disciplinary action for a violation of Occupations Code Chapter 1051 or a board rule that applies to architects; recklessness in the practice of architecture, including recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration; or dishonest practice in the practice of architecture by an architect.
- Under 22 Tex. Admin. Code §1.143, recklessness in the practice of architecture includes action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes any person’s health, safety, or welfare.
- Under 22 Tex. Admin. Code §1.144, an architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to defraud, deceive, or create a misleading impression.
- Senate Bill 509 (77th Regular Session, 2001), subsequently codified as Tex. Occ. Code §1954.259, prohibits a municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building from issuing the permit unless the applicant provides:

“(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned

renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.”

- By issuing the September 12, 2018 letter to the City of Austin Watershed Department, Respondent disregarded compliance with Tex. Occ. Code §1954.259 and created a misleading impression that such compliance had occurred. Because Respondent had not reviewed any material safety data sheets for materials used in the initial construction or subsequent renovations or alterations of the building, he could not provide the certification required under Tex. Occ. Code §1954.259(b)(2). Thus, a building permit could not be issued until an asbestos survey of all parts of the building affected by the previously performed demolition or planned renovation had been completed. By advocating for the issuance of a building permit while falsely representing that “the requirements of Texas Senate Bill 509 have been followed,” and stating that “neither asbestos testing nor an asbestos survey should be required,” Respondent acted contrary to the requirements of Tex. Occ. Code §1954.259(b)(2) in a manner that jeopardized the health safety or welfare of the public, in that the performance of construction activities within the building in the absence of an asbestos survey could have exposed individuals to asbestos contained within the building or exposed during the recent demolition. These actions violated Tex. Occ. Code §1051.752(1),(5)&(6) and 22 Tex. Admin. Code §§ 1.143(b)(3) and 1.144(a)(3).

**Action Recommended by Executive Director:**

- Enter an Order which adopts the findings of fact, conclusions of law, and recommended administrative penalty of **\$3,000** as set forth in the Revised Report and Notice of Violation dated January 28, 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: 047-21A**  
**Respondent: Robert C. Grassle**  
**Location of Respondent: Houston, Texas**  
**Nature of Violation: Violation of Continuing Education Requirements**  
**Instrument: Report and Notice of Violation**

**Findings:**

- Robert C. Grassle (hereafter “Respondent”) is registered as an architect in Texas with registration number 12036.
- Previously, on or about February 25, 2016, in TBAE Enforcement Matter 034-16A, the Board entered an Order against Respondent, based on findings of fact that he failed to maintain a detailed record of continuing education activities. As a result of the Order, Respondent was required to pay an administrative penalty in the amount \$700.
- In the current matter, based upon the results of a random continuing education audit, it was determined that Respondent failed to complete his continuing education requirements for the audit period of January 1, 2018 through December 31, 2018.
- In addition to failing to complete the required continuing education hours within the continuing education period, Respondent falsely certified completion of CE responsibilities in order to renew his architectural registration.
- During the course of staff’s investigation regarding Respondent’s continuing education credits, Respondent failed to timely respond to a written request for information.

**Applicable Statutory Provisions and Rules:**

- By indicating at the time of his online renewal that he was in compliance with the Board’s mandatory continuing education requirements, Respondent provided the Board with false information in violation of Board rule 1.69(g). The Board’s standard assessment for providing false information is **\$700**.
- By failing to timely complete the required continuing education program hours, Respondent violated Board rule 1.69(f). The standard administrative penalty assessed for this violation is **\$500**.
- By failing to respond to a written request for information within 30 days, Respondent violated Board rule 1.171 which requires that an architect answer an inquiry or produce requested documents within 30 days of a request. This violation is subject to a standard administrative penalty of **\$250**.

**Action Recommended by Executive Director:**

- The standard penalty for a first-time violation of these rules is \$1,450. However, since Respondent has previously been subject to discipline for failure to comply with continuing education requirements, he is subject to increased penalties under 22 Tex. Admin. Code §§1.177(5) and 1.232(k). Therefore, the Executive Director recommends

that the Board enter an Order which adopts the findings of fact, conclusions of law, and recommended administrative penalty of **\$2,000** as set forth in the Report and Notice of Violation dated December 21, 2020.

**TBAE Bill Tracking**  
**87<sup>th</sup> Texas Legislature, Regular Session**

Bill	Author	Companion	Relating to	Status
<b>Professional</b>				
<a href="#">HB 233</a>	Murr		the applicability of the prohibition on governmental entities adopting certain regulations governing the use of certain building products, materials, or methods.	Filed 11/09/20
<b>General Regulatory</b>				
<a href="#">HB 610</a>	Swanson		judicial review of certain local laws applicable to state license holders.	Filed 11/19/20
<a href="#">HJR 33</a>	Swanson		Proposing a constitutional amendment protecting an individual's right to earn a living free from unnecessary governmental interference.	Filed 11/19/20
<a href="#">SB 424</a>	Hinojosa		state agency enforcement of laws regulating small businesses.	Filed 01/25/20
<b>Rulemaking</b>				
<a href="#">HB 70</a>	Swanson		legislative review and approval of certain state agency rules.	Filed 11/09/20
<a href="#">HB 614</a>	Thompson, Senfronia		a cause of action for deprivation of certain rights, privileges, or immunities under color of law.	Filed 11/20/20
<a href="#">HB 665</a>	Landgraf	SB 525	an emergency rule adopted by a state agency during certain periods of disaster.	Filed 11/30/20
<a href="#">HB 1322</a>	Shaheen		a summary of a rule proposed by a state agency.	Filed 01/25/21
<a href="#">HJR 6</a>	Swanson		Proposing a constitutional amendment authorizing the legislature to provide for legislative review or approval of state agency rules.	Filed 11/09/20
<a href="#">SB 150</a>	Powell		the procedure for adoption by a state agency of rules that may have an adverse economic effect on small businesses, micro-businesses, and rural communities.	Filed 11/09/20
<a href="#">SB 525</a>	Buckingham	HB 665	an emergency rule adopted by a state agency during certain periods of disaster.	Filed 01/29/21
<b>Disaster/Emergency Response</b>				
<a href="#">HB 311</a>	Vasut		the declaration and length of a state of disaster or public health disaster.	Filed 01/13/21
<a href="#">HB 899</a>	Middleton		prohibiting a licensing authority from taking disciplinary action against certain license holders for violating an emergency management plan or a rule, order, or ordinance issued under the plan.	Filed 12/22/20

<a href="#">HB 1137</a>	Cain		limiting the assessment of certain fees and taxes during a declared state of disaster.	Filed 01/15/21
<a href="#">HB 1557</a>	Martinez Fischer		the authority of the governor and the legislature with respect to certain declared states of disaster.	Filed 02/03/21
<a href="#">HJR 42</a>	Toth		Proposing a constitutional amendment regarding certain powers of the governor in issuing orders or proclamations and specifying the powers of the legislature in special sessions called following certain disaster or emergency declarations.	Filed 12/08/20
<a href="#">SB 422</a>	Springer		the establishment of the Emergency Powers Board and its powers during a declared state of disaster or public health disaster.	Filed 01/25/21
<a href="#">SJR 29</a>	Springer		Proposing a constitutional amendment requiring the governor to call the legislature into special session following certain disaster or emergency declarations and specifying the powers of the legislature in those special sessions.	Filed 01/25/21
<b>Cybersecurity</b>				
<a href="#">HB 1118</a>	Capriglione	SB 345	state agency and local government compliance with cybersecurity training requirements.	Filed 01/14/21
<a href="#">SB 345</a>	Paxton		state agency and local government compliance with cybersecurity training requirements.	Filed 01/14/21
<a href="#">SB 475</a>	Nelson		Relating to state agency and local government information security, including establishment of the state risk and authorization management program and the Texas volunteer incident response team; authorizing fees.	Filed 01/27/21

- Other bill topics include: human resources, military veterans and spouses, public information, purchasing, and criminal convictions