

No. 84. An act relating to the regulation of landscape architects.

(S.28)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) All states in the United States, with the exception of Vermont, regulate the profession of landscape architects.

(2) Most states do not have sunrise criteria for regulation of new professions such as that set forth in chapter 57 of Title 26.

(3) Landscape architecture is the fastest growing profession among design professions.

(4) Architects', engineers' and landscape architects' scopes of practice overlap.

(5) Architects and engineers are licensed by the state of Vermont, while landscape architects are not.

(6) The general welfare of Vermonters is impacted by the work of landscape architects and those impacts continue to grow with the growth of the profession.

(7) There are economic and environmental side effects resulting from the lack of regulation of landscape architects.

(8) It is clear that the provisions set forth in this act may benefit the Vermont economy and environment by promoting the landscape architect profession within and outside of the state.

(9) While it is not clear that regulation of landscape architects will benefit the public health, safety or welfare, or that unregulated practice will harm or endanger the public health, safety or welfare, the potential for those issues to affect Vermonters is bound to increase as the services become more popular.

(10) Based on the foregoing, the profession of landscape architects should be licensed as set forth in this act.

Sec. 2. 26 V.S.A. chapter 46 is added to read:

Chapter 46. Landscape Architects

Subchapter 1. General Provisions

§ 2611. DEFINITIONS

As used in this chapter:

(1) “Director” means the director of the office of professional regulation.

(2) “Disciplinary action” means any action taken against a licensed landscape architect for unprofessional conduct.

(3) “Landscape architect” means a person who complies with all provisions of this chapter and is licensed by the director to engage in the practice of landscape architecture.

(4) "License" means an authorization granted by the director to practice landscape architecture.

(5) "Practice of landscape architecture" means any service where landscape architectural education, training, experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, and design, including the preparation and filing of drawings, plans, specifications and other contract documents and the administration of contracts relative to projects principally directed at the functional and aesthetic development, use, or preservation of land that directly affects the health, safety and welfare of the public. These services include the implementation of land development concepts and natural resource management plans through the design or grading of: land forms; on-site, surface, and storm water drainage; soil conservation and erosion control; small water features; pedestrian, bicycle, and local motor vehicular circulation systems; and related construction details.

§ 2612. PROHIBITION AND ENFORCEMENT

(a) No person shall:

(1) Practice or attempt to practice landscape architecture or hold himself or herself as being able to do so in this state without first obtaining a valid license as required by this chapter.

(2) Use the title “landscape architect,” “landscape architecture,” or “landscape architectural” in connection with the person’s name without being duly licensed under this chapter.

(b) No person licensed under this chapter shall:

(1) Stamp or seal documents with his or her landscape architect seal if his or her license has expired or is revoked or suspended.

(2) Practice or attempt to practice landscape architecture during license revocation or suspension.

(3) Engage in unprofessional conduct.

(4) Violate any provisions of this chapter.

(c) A person who willfully violates any provisions of subsection (a) of this section shall be subject to the penalties provided in subsection 127(c) of Title 3.

(d) The administrative law officer may bring an action for injunctive relief to enforce the provisions of this chapter.

§ 2613. EXEMPTIONS

(a) This chapter shall not affect or prevent:

(1) The practice of architecture, land surveying, engineering, or other licensed profession by persons not licensed under this chapter;

(2) Drafters, clerks, project managers, superintendents, students, and other employees or interns from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of sites by contractors or superintendents employed by contractors or the preparation of shop drawings in connection with the construction, alteration, or supervision;

(4) Owners or contractors from engaging persons who are not landscape architects to observe and supervise site construction of a project;

(5) The preparation of construction documents showing plantings, other horticulture-related elements, or landscape materials unrelated to horticulture;

(6) Individuals from making plans, drawings, or specifications for any property owned by them and for their own personal use;

(7) The design of irrigation systems; and

(8) Officers or employees of the federal government from working in connection with their employment.

(b) This section shall not be construed to permit a person not licensed as provided in this chapter to use the title landscape architect or any title, sign, card, or device to indicate that the person is a landscape architect.

(c) This chapter shall not be construed to limit or restrict in any manner the right of a practitioner of another profession or occupation from carrying on in the usual manner any of the functions of that profession or occupation as their experience, education, and training allow them to practice, including the professions of landscape design, garden design, planning, forestry, and forestry management.

Subchapter 2. Administration

§ 2621. OFFICE OF PROFESSIONAL REGULATION

(a) The director shall:

(1) Provide general information to applicants for licensure as landscape architects.

(2) Explain appeal procedures to licensed landscape architects and applicants, and complaint procedures to the public.

(3) Administer fees as established by law.

(4) Receive applications for licensure, administer examinations, provide licenses to applicants qualified under this chapter, renew, revoke and reinstate licenses as ordered by an administrative law officer.

(5) Refer all disciplinary matters to an administrative law officer.

(b) The director may adopt rules necessary to perform his or her duties under this section.

§ 2622. ADVISOR APPOINTEES

(a) The secretary of state shall appoint two landscape architects for four-year terms to serve at the secretary's pleasure as advisors in matters relating to landscape architecture. One of the initial appointments may be for less than a four-year term. An appointee shall have not less than three years' experience as a landscape architect immediately preceding appointment, shall be licensed as a landscape architect in Vermont or be in the process of

applying for licensure, and shall be actively engaged in the practice of landscape architecture in this state during incumbency.

(b) The director shall seek the advice of the landscape architect advisors in carrying out the provisions of this chapter.

§ 2623. APPLICATIONS

Applications for licensure shall be on forms provided by the director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 2624. QUALIFICATIONS

(a) A person shall be eligible for licensure as a landscape architect if the person qualifies under one of the following provisions:

(1) Comity or endorsement. A person holding a registration or license to engage in the practice of landscape architecture issued on the basis of an examination administered by the council of landscape architectural registration boards, by the appropriate regulatory authority of a state, territory, or possession of the United States, the District of Columbia, or another country based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter may be examined on landscape architecture matters peculiar to Vermont and granted a license at the discretion of the director. The director shall accept evidence that an applicant

holds a valid certificate from the council of landscape architectural registration boards as proof of qualification for licensure under this subdivision.

(2) Graduation and examination. An applicant who has graduated, having completed a landscape architecture curriculum approved by the landscape architectural accreditation board, followed by at least three years of diversified experience in landscape architecture under the supervision of a licensed, registered, or certified landscape architect and who has passed an examination administered by the council of landscape architectural registration boards may be granted a license. The director may accept experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor for one year of the experience required under this subdivision. All applicants shall have at least two years of experience under the supervision of a licensed, certified, or registered landscape architect.

(3) Experience and examination. An applicant who has completed nine or more years' diversified experience in landscape architecture under the supervision of a licensed, certified, or registered landscape architect and who has passed an examination administered by the council of landscape architectural review boards may be granted a license. Experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor may be substituted for no more than three years of this requirement. Credits from a landscape architecture program accredited by

the landscape architectural accreditation board may be substituted for up to no more than three years of this requirement.

(b) Upon application for licensure, an applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall file a report with the director certifying the practical experience requirements completed. The director shall certify that, to the best of the director's knowledge, the report is correct.

(c) An applicant may submit experience accrued for a period of three years in the practice of landscape architecture, as defined in subdivision 2612(5) of this title, in order to meet the experience requirements set forth in subsection (a) of this section if the experience was obtained in Vermont on or before December 31, 2011. Evidence of experience shall be reviewed and approved by the director.

(d) An applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall pass a written examination administered by the council of landscape architectural boards on technical and professional subjects as may be prescribed by the council of landscape architectural boards. Applicants may apply for examination before completing the experience requirement as long as the experience requirements will be fulfilled by the examination date.

Notification of the results of examinations shall be mailed to each candidate within 30 days of the date the results are received by the director. A candidate failing to pass the examination may apply for reexamination and may sit for a

regularly scheduled examination as many times as the candidate chooses to do so. If an applicant does not pass the entire examination, the applicant shall not be required to retake any section of an examination that the applicant has previously passed. No license shall be granted to an applicant until he or she passes all sections of the exam.

(e) Licensing standards and procedures adopted by the director by rule shall be fair and reasonable. Those standards and procedures shall be designed and implemented to ensure that all applicants are admitted to practice unless there is a good reason to believe that practice by a particular applicant would be inconsistent with the public health, safety, or welfare. Licensing standards shall not be designed or implemented for the purpose of limiting the number of licensed landscape architects.

§ 2625. LICENSURE; GENERALLY

The director shall issue a license, upon payment of the fees required in this chapter, to an applicant who has satisfactorily met all the requirements of this chapter.

§ 2626. LICENSE RENEWAL

(a) A license shall be renewed every two years upon application and payment of the required fee. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license. A license which has lapsed

shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The director may adopt rules necessary for the protection of the public to assure the director that an applicant whose license has lapsed or who has not worked for more than three years is professionally qualified. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in subsection 125(b) of Title 3.

§ 2628. SEAL

Each licensed landscape architect shall obtain a seal of a design as the director shall authorize and direct. Plans and specifications prepared by or under the direct supervision of a licensed landscape architect shall be stamped with the licensed landscape architect's seal.

§ 2629. UNPROFESSIONAL CONDUCT

Unprofessional conduct means the following conduct and the conduct by a licensee or applicant for licensure as set forth in section 129a of Title 3:

(1) Accepting and performing responsibilities which the licensed landscape architect knows or has reason to know that he or she is not competent to perform, or undertaking to perform professional services in

specific technical areas in which the licensed landscape architect is not qualified by education, training, and experience;

(2) Failing to practice with reasonable care and competence and to apply the technical knowledge and skill ordinarily applied by licensed landscape architects practicing in the same locality;

(3) Assisting in the application for licensure of a person known by the licensed landscape architect to be unqualified in respect to education, training, or experience;

(4) Accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all interested parties;

(5) Failing to disclose fully in writing to a client or employer the nature of any business association or direct or indirect financial interest substantial enough to influence the licensed landscape architects judgment in the performance of professional services;

(6) Soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing their products;

(7) Failing to disclose compensation for making public statements on landscape architectural questions;

(8) Offering or making a payment or gift to an elected or appointed government official with the intent to influence the official's judgment in

connection with a prospective or existing project in which the licensed landscape architect is interested;

(9) Offering or making a gift of other than nominal value, including reasonable entertainment and hospitality, with the intent to influence the judgment of an existing or prospective client in connection with a project in which the licensed landscape architect is interested;

(10) Knowingly designing a project in violation of applicable state and local laws and regulations;

(11) Making a willful material misrepresentation with respect to the qualifications or experience of an applicant or otherwise in the practice of the profession, whether by commission or omission;

(12) Acting, while serving as an advisor to the director, in any way to contravene willfully the provisions of this chapter and thereby artificially restricting the entry of qualified persons into the profession;

(13) Using the licensed landscape architect's seal on drawings prepared by others not in his or her employ, or using the seal of another;

(14) Inaccurately representing to a prospective or existing client or employer the licensed landscape architect's qualifications and scope of responsibility for work for which he or she claims credit;

(15) Signing or sealing technical submissions unless they were prepared by or under the responsible control of the licensed landscape architect, except that the licensed landscape architect may sign or seal those portions of the

technical submissions that were prepared by or under the responsible control of persons who are licensed under this chapter if the licensed landscape architect has reviewed and adopted in whole or in part those portions and has either coordinated their preparation or integrated them into his or her work; and

(16) In each office maintained for preparation of drawings, specifications, reports, or other professional work, failing to have a licensed landscape architect with direct knowledge and supervisory control of such work resident and regularly employed in that office.

Sec. 3. TRANSITIONAL PROVISIONS

The director shall establish a procedure so that residents of Vermont who have been engaged in the practice of landscape architecture in Vermont, and who are not licensed as landscape architects in other states prior to the effective date of this act, may become licensed without examination. To accomplish this, the director shall establish that these candidates shall provide evidence to the director and a special temporary panel, consisting of five Vermont landscape architects licensed under the provisions of chapter 46 of Title 26, to review the evidence regarding the qualifications for licensure without examination of candidates under this procedure. Only those applicants who can establish a record of landscape architectural practice for nine or more years shall be eligible for licensure under this section. A degree from an accredited landscape architecture program may substitute for years of the

experience requirement under this section at the rate of two years of accredited school work for one year of landscape architectural work experience.

Sec. 4. REVIEW BY DIRECTOR OF THE OFFICE OF PROFESSIONAL
REGULATION; REPEAL

(a) Sec. 3 of this act shall be repealed on July 1, 2014.

(b) On or before December 31, 2013, the director shall file a report with the house and senate committees on government operations on whether this act has benefited the public health, safety or welfare. The report shall make a specific finding of whether or not this act has benefited the public health, safety or welfare. If the report finds no such benefit, this act shall be repealed on July 1, 2014.

Approved: April 21, 2010