Ohio Legislative Service Commission

Bill Analysis

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S.B. 68*

130th General Assembly
(As Reported by S. State Government Oversight and Reform)

Sen. Schaffer

BILL SUMMARY

Architects Board

- Eliminates the process for reinstatement of certificates issued by the Architects Board.
- Allows the Architects Board to deny renewal of, revoke, or suspend certificates without an adjudication hearing when such a hearing is not requested.

Ohio Landscape Architects Board

- Changes the name of the State Board of Landscape Architect Examiners to the Ohio Landscape Architects Board.
- States that any person registered under the Landscape Architects Law can be designated or known as a landscape architect, professional landscape architect, or registered landscape architect.
- Requires a person to be registered under the Landscape Architects Law before using the title of professional landscape architect or registered landscape architect on certain materials or before assuming a title or using certain statements to indicate or imply that the person is a landscape architect, professional landscape architect, or registered landscape architect.

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* This analysis was prepared before the report of the Senate State Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsor and the legislative history may be incomplete.

- Adds use of the titles of professional landscape architect and registered landscape architect to the specification that the Landscape Architects Law does not affect the right of an individual to engage in the occupation of growing or marketing nursery stock.

- Provides that a stamp can be obtained by a registered professional landscape architect or landscape architect.

- Prohibits a firm, partnership, association, limited liability company, or corporation, except for a nonprofit membership corporation, from using a name including "professional landscape architect," or "registered landscape architect" or any modification or derivation of those words, unless all the required information is filed.

- Permits the Ohio Landscape Architects Board to authorize any person to use the title "emeritus landscape architect."

- Permits the Board's designee, in addition to the Board, to hold examinations and register qualified applicants.

- Allows the Board power to require an applicant to hold a current council record.

- Modifies the registration procedures to practice landscape architecture.

- Removes the authority of the Board to establish a fee for taking or retaking the examination.

- Removes the limitation that a registration suspension may not exceed one year.

- Makes changes to the authority to fine violators of the Landscape Architects Law.

- Modifies the list of items for which the Board may discipline an applicant, registrant, certificate holder, or other person.

- Repeals a provision related to notice of a hearing and provides that administrative procedures of the Board must be governed by the Administrative Procedure Act.

- Provides, if a person fails to request a hearing within 30 days after the date the person is notified, the Board, can take the action against a person without holding an adjudication hearing.

- Repeals a provision related to reinstatement of a registration or certificate of authorization that requires the Board to not renew or reissue such a license without

an examination, or renew or reissue such a certificate without reapplication to the Board.

- Allows the Board's designee to present violations of the Landscape Architects Law to the county prosecuting attorney.

- Specifies and makes modifications to prohibitions under the Landscape Architects Law.

Expenditures

- Removes the requirement that provides that all the expenditures of the Architects Board and Ohio Landscape Architects Board must be paid by vouchers approved by the secretary or executive secretary of the Architects Board, or both, as authorized by the Board.

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CONTENT AND OPERATION

Architects Board

Revocation or suspension of certificate

Generally, the Architects Board can by three concurring votes deny renewal of, revoke, or suspend any certificate of qualification to practice architecture, issued or

renewed under ongoing law, or any certificate of authorization, issued or renewed under ongoing law, if proof satisfactory to the Board is presented in certain cases.

The bill eliminates the authority for, at any time after the expiration of six months from the date of the revocation or suspension of a certificate, the individual, firm, partnership, association, or corporation to apply for reinstatement of the certificate. The bill further removes the authority, upon showing that all loss caused by the individual, firm, partnership, association, or corporation whose certificate has been revoked or suspended has been fully satisfied and that all conditions imposed by the revocation or suspension decision have been complied with, and upon the payment of all costs incurred by the Board as a result of the case at issue, the Board, at its discretion and upon evidence that in its opinion would so warrant, to restore the certificate.[1]

Adjudication hearing

Under the bill, if a person fails to request a hearing within 30 days after the date the Board, under the Administrative Procedure Act, notifies the person of the Board's intent to act against the person with respect to denying renewal of, revoking, or suspending any certificate of qualification to practice architecture, or any certificate of authorization, the Board by a majority vote of a quorum of the Board members can take the action against a person without holding an adjudication hearing.[2]

Name change fixes

Sub. S.B. 225 of the 127th General Assembly changed the name of the State Board of Examiners of Architects to the Architects Board. The bill makes modifications to bring current law into compliance with that change.[3]

Ohio Landscape Architects Board

Name change

The bill changes the name of the State Board of Landscape Architect Examiners to the Ohio Landscape Architects Board.[4]

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[1] R.C. 4703.15(A).

[2] R.C. 4703.15(C).

[3] R.C. 119.06, 4703.071, and 4703.31.

[4] R.C. 119.06, 4703.30, 4703.31, 4703.32, 4703.33, 4703.331, 4703.34, 4703.35, 4703.36, 4703.37, 4703.38, 4703.41, 4703.44, 4703.46, 4703.49, 4703.50, 4703.52, and 4703.53.

Landscape architect, professional landscape architect, and registered landscape architect

The bill adds that a professional landscape architect or a registered landscape architect means a person who has been registered as provided in the Landscape Architects Law. Current law includes only a landscape architect under this designation.[5] Further, the bill states that any person registered under the Landscape Architects Law can be designated or known as a landscape architect, professional landscape architect, or registered landscape architect.

Additionally, the bill provides that no person must use the title of professional landscape architect or registered landscape architect on any title, sign, card, or device indicating, or tending to indicate, or represent in any manner that the person is a professional landscape architect or registered landscape architect unless the person is registered under the Landscape Architects Law. Also, the bill prohibits a person from assuming a title or using any abbreviation, words, letters, or figures to indicate or imply that the person is a landscape architect, professional landscape architect, or registered landscape architect, unless the person is registered under the Landscape Architects Law.[6]

The bill adds use of the titles of professional landscape architect and registered landscape architect to the current law specification that the Landscape Architects Law does not affect the right of an individual to engage in the occupation of growing or marketing nursery stock or to use the title "nurseryperson," "landscape nurseryperson," "gardener," "landscape gardener," "landscape designer," "general contractor," "landscape contractor," "land developer," "golf course architect," or "golf course designer," if the individual does not engage in the practice of landscape architecture or use the title "landscape architect," *"professional landscape architect," or "registered landscape architect,"* unless the person has complied with the Landscape Architects Law.[7]

The bill further provides that a stamp can be obtained by a registered professional landscape architect or landscape architect, under the ongoing law's authority for each landscape architect, upon registration by the Board, to obtain a stamp of the design authorized by the Board, bearing the name of the registrant, date of

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[5] R.C. 4703.30.

[6] R.C. 4703.32(A).

[7] R.C. 4703.32(D).

registration, number of certificate, and the legend "registered landscape architect," *"professional landscape architect," or "landscape architect."*[8]

Similarly, no firm, partnership, association, limited liability company, or corporation is permitted to provide landscape architectural services, hold itself out to the public as providing landscape architectural services, or use a name including the word "landscape architect," "professional landscape architect," or "registered landscape architect" or any modification or derivation of those words, unless the firm, partnership, association, limited liability company, or corporation files all information required to be filed under the Landscape Architects Law with the Board and otherwise complies with all requirements of that Law. However, a nonprofit membership corporation can use a name including the word "landscape architect," "professional landscape architect," or "registered landscape architect" or any modification or derivation of those words without complying with this provision. Current law contains the same prohibition and grants the same permission, but only as to "landscape architect." Therefore, the bill adds professional landscape architect and registered landscape architect to this provision.[9]

Emeritus landscape architect

The bill permits the Ohio Landscape Architects Board to authorize any person to use the title "emeritus landscape architect." An emeritus landscape architect is an individual who has been registered to practice landscape architecture in Ohio for at least ten years, is fully retired from the practice of landscape architecture, and is at least 65 years old. An emeritus landscape architect is exempt from the continuing education and fee requirements of the Landscape Architects Law.[10]

Examinations

Under the bill, the Board, or the Board's designee, must hold examinations not less than once annually and must register as a landscape architect each applicant who demonstrates to the satisfaction of the Board that the applicant has met all the requirements to become registered by the Board. Current law requires the Board to hold the examinations and register qualified applicants.[11]

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[8] R.C. 4703.32(F).

[9] R.C. 4703.331(B).

[10] R.C. 4703.32(B).

[11] R.C. 4703.33(B).

Reciprocity

The bill includes in the Board's power related to registering landscape architects registered or licensed in another state, that the Board may require such an applicant to hold a current council record, in addition to the current law requirement that the Board may require the applicant to hold a current certificate in good standing, issued by the Council of Landscape Architectural Registration Boards.[12]

Certificate of qualification

Under the bill, each certificate of qualification issued and registered must authorize the holder to practice landscape architecture as a landscape architect in Ohio until the last day of December of each even-numbered calendar year, unless revoked or suspended under the Landscape Architects Law. Current law provides that each certificate of qualification issued and registered must authorize the holder to practice landscape architecture as a landscape architect in Ohio until the last day of October of each odd-numbered calendar year, unless revoked or suspended under the Landscape Architects Law.

Under the bill, the preceding paragraph's amendments must not apply to certificates of qualification issued before the bill's effective date. A certificate of qualification issued before that date must authorize the holder to practice landscape architecture as a landscape architect in Ohio until October 31, 2013, unless revoked or suspended for cause as provided in the Architects Law or suspended because of a default of a child support order. The holder may renew the certificate in accordance with the amendments discussed in the preceding paragraph, on or after October 31, 2013.[13]

Fees

The bill removes the authority of the Board to establish a fee for taking or retaking the examination conducted under the authority of the Board at an amount adequate to cover the expenses of procuring and grading the examination plus a fee for retaking all or parts of the required examination.[14]

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[12] R.C. 4703.35.

[13] R.C. 4703.36(B); Section 3.

[14] R.C. 4703.37(C)(1).

Disciplinary actions; hearings

Suspension

In relation of the Board's authority to suspend a landscape architect's registration, the bill removes the limitation that such a suspension may be for a period not exceeding one year. Current law limits a suspension to not exceeding a one-year period.

Fines

The bill adds that the Board may fine a person when the registrant, holder of a certificate of authorization, or other person does any of the items for which the Board may otherwise discipline applicants, registrants, or certificate holders. This fine appears to be a civil fine. The bill removes the current law authority that states that whoever violates the Landscape Architects Law must be fined not less than $50 nor more than $200 for the first offense; for each subsequent offense such person must be fined not less than $200 nor more than $500. The bill instead limits these fine restrictions to violations of the provisions related to the prohibitions of practicing landscape architecture or using the titles related to that practice with complying with the Landscape Architects Law.

Other actions

The bill adds to the list of items for which the Board may discipline an applicant, registrant, certificate holder, or other person (in regard to the fining authority) when the applicant, registrant, certificate holder, or other person has obtained or attempted to obtain registration or a certificate of authorization by false oath or affirmation and when the applicant, registrant, certificate holder, or other person fails to comply with any disciplinary sanction issued by the Board.

Continuing law also permits a disciplinary action by the Board if a registrant, applicant, or certificate holder does any of the following:

(1) Has obtained or attempted to obtain registration or a certificate of authorization by fraud or material misrepresentation;

(2) Is impersonating or has attempted to impersonate a landscape architect or a former landscape architect;

(3) Is found by the Board to have been guilty of fraud, deceit, or gross negligence in the practice of landscape architecture or in providing landscape architectural services;

(4) Has affixed the registrant's or certificate holder's signature to plans, drawings, specifications, or other professional documents that have not been prepared by the registrant or certificate holder or under the registrant's or certificate holder's immediate and responsible direction, or has permitted the registrant's or certificate holder's name to be used for the purpose of assisting any individual, not a landscape architect, to evade the Landscape Architects Law;

(5) Fails the required examination;

(6) Is found by the Board to have violated any rule governing the standards for education, experience, services, conduct, and practice or any rule adopted by the Board under the Landscape Architects Law.[15]

Administrative hearings

The bill repeals a provision that states that the Board must not refuse to renew a registration or certificate of authorization, or suspend or revoke a registration or certificate of authorization, without at least 20 days' notice to the applicant, registered landscape architect, or other interested party, who must be entitled to a hearing by the Board under the Administrative Procedure Act. At least ten days before the hearing date, the Board must notify the applicant, registered landscape architect, or other interested party of the nature of the matters to be presented at the hearing. Within 30 days after the hearing, the Board must give notice of its final decision to the applicant, registered landscape architect, or other interested party.[16]

Under the bill, the administrative procedures of the Board must be governed by the Administrative Procedure Act and the Board's authorized representatives can administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda, or other information necessary to the carrying out of the Landscape Architects Law. Under current law, unless otherwise provided in the provision discussed in the preceding paragraph, the administrative procedures of the Board are also governed by the Administrative Procedure Act, and the President of the Board and the President's authorized representatives can administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda, or other information necessary to the carrying out of the Landscape Architects Law.

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[15] R.C. 4703.41 and 4703.99(B).

[16] R.C. 4703.42 (repealed).

The bill further provides that if a person fails to request a hearing within 30 days after the date the Board, in accordance with the Administrative Procedure Act, notifies the person of the Board's intent to take a disciplinary action against the person, the Board, by a majority vote of a quorum of the Board members, can take the action against a person without holding an adjudication hearing.[17]

Renewing revoked registration

The bill repeals the provision that provides, after revocation of a registration or certificate of authorization, for gross negligence in the practice of landscape architecture or in providing fraudulent, deceitful, or grossly negligent landscape architectural services, the Board must not renew or reissue such license without an examination, or renew or reissue such certificate without reapplication to the Board. Under the repealed provision, the individual whose registration is revoked for such cause or the corporation, firm, partnership, or association whose certificate of authorization is revoked can file a new application for an examination or for a certificate of authorization with the Board, and upon showing that all loss caused by the gross negligence for which the license or certificate was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with, the Board can at its discretion issue a new license or certificate.[18]

Criminal penalties

The bill states that the prosecuting attorney in each of the counties must prosecute by court action all violations of the Landscape Architects Law occurring in the prosecuting attorney's jurisdiction as may be presented for prosecution by the Board or the Board's designee. Under current law, only the Board can present violations to the county prosecuting attorney.[19]

The bill prohibits a person from doing any of the following:

(1) Obtaining or attempting to obtain registration or a certificate of authorization by fraud or material representation or by false oath or affirmation;

(2) Impersonating or attempting to impersonate a landscape architect or former landscape architect;

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[17] R.C. 4703.44.

[18] R.C. 4703.43 (repealed).

[19] R.C. 4703.49(B).

(3) Recklessly engaging in fraud, deceit, or gross negligence in the practice of landscape architecture or in providing landscape architectural services.

The bill also prohibits a registrant or certificate holder from (1) affixing the registrant's or certificate holder's signature to plans, drawings, specifications, or other professional documents that have not been prepared by the registrant or certificate holder or under the registrant's or certificate holder's immediate and responsible direction and (2) permitting the registrant's or certificate holder's name to be used for the purpose of assisting any individual, not a landscape architect, to evade the Landscape Architects Law.[20]

Under the bill, whoever violates the above provisions is guilty of a third degree misdemeanor; for each subsequent offense such person is guilty of a first degree misdemeanor.[21]

The bill repeals a provision that prohibits a person from doing either of the following: (1) obtaining or attempting to obtain registration as a landscape architect or a certificate of authorization by fraud or material misrepresentation or (2) willfully making a false oath or affirmation.[22] Similar provisions are recodified in the bill as provided above; however, the making of a false oath or affirmation no longer needs to be willful under the bill.

Expenditures of Architects Board and Ohio Landscape Architects Board

The bill removes the requirement that provides that all the expenditures of the Architects Board and Ohio Landscape Architects Board must be paid by vouchers approved by the secretary or executive secretary of the Architects Board, or both, as authorized by the Board.[23]

HISTORY

ACTION	DATE
Introduced	03-12-13
Reported, S. State Gov't Oversight & Reform	-----

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[20] R.C. 4703.411.

[21] R.C. 4703.99(A).

[22] R.C. 4703.45 (repealed).

[23] R.C. 4703.50.