LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Regulatory Analysis

Notice of Intended Action to be published: 193D—Chapter 4
"Rules of Professional Conduct and Discipline Procedures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C and 544B.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 272C, and 544B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 19, 2024	6200 Park Avenue
2:30 to 3 p.m.	Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's (DIAL's) website prior to the hearing.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by DIAL no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

The purpose of proposed Chapter 4 is to provide Iowans, registrants, and their employers with information about the disciplinary process and possible actions against registered landscape architects. The public knows that the Landscape Architectural Examining Board can impose discipline for violations of the Board's rules. The public has the ability to submit a complaint to the Board, which can then investigate the allegation. The Board has the ability to seek discipline against the registrant, ensuring that the public is protected.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Costs are not generally incurred by the public. Registrants are responsible for costs associated with disciplinary actions. Civil penalties are capped at $1,000 per instance.

A cost to the agency is the staff time needed to manage Board activities, including complaints and investigations. The time needed to manage this provision is generally in the form of written and verbal correspondence with licensees, complainants, and other pertinent parties; gathering reports; conducting interviews as needed; and authoring investigative reports. This information is then provided to the Board at Board meetings where costs are incurred through per diem ($50 per day for official Board duties) and mileage for the Board members. Mileage costs have been minimal due to the use of virtual meetings. If a case is determined by the Board to need a higher-level review by an

outside expert, there is a cost to the agency to conduct a peer review. Staff salaries support the work of the Board.

- **Classes of persons that will benefit from the proposed rulemaking:**

The intended benefit of this rule is to ensure public safety and maintain a high level of service for Iowans. The Board rarely receives complaints and takes few disciplinary actions. In fiscal year 2024, the Board did not receive any complaints. The Board believes that the benefit of the rule is being achieved because it provides the public and licensees with information to ensure that they understand their responsibilities and rights regarding complaints and investigations.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Because complaints are rare, costs are extremely low. The Board believes that the benefits achieved justify the costs because landscape architecture is a profession that requires knowledge, training, and skill. The Board has not identified a less restrictive alternative for public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment. In 2023, the Board only received one complaint. The Board has not received any complaints yet in 2024.

- **Qualitative description of impact:**

Establishing minimum requirements and imposing discipline on registrants when requirements are not met ensures safety for the registrant and the consumer. The cost of inaction is an increase in the potential for injury to the public and the lack of a method for the public to file a complaint or seek discipline against a registrant who violates professional standards.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

A cost to the agency is the staff time needed to manage Board activities, which includes managing complaints and conducting investigations when a registrant violates applicable rules or laws. Shared staff at approximately 0.25 of a full-time equivalent (FTE) position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- **Anticipated effect on state revenues:**

There is no anticipated effect on State revenues.

Costs associated with implementing this rule are paid by individual registrants, not the State. Staff salaries to support the work of the board are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Because there are only a small number of complaints submitted, costs are extremely low. The board believes that the benefits achieved justify the costs. The purpose of investigations and complaints is to address allegations against licensees, enabling the board to make informed decisions regarding those licensees. Eliminating complaints and investigations would cause harm to the public and would allow a licensee’s negative actions to go unchecked.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Board has not identified any alternatives to these disciplinary rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Board has not identified any alternatives to these disciplinary rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for registered landscape architects. While some registered landscape architects likely are running a small business of their own, some work for large organizations. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193D—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE PROCEDURES

193D—4.1(544B,17A) Rules of conduct. Failure by a licensee to adhere to the provisions of Iowa Code chapters 272C and 544B and rules implementing either chapter will be grounds for disciplinary action.

4.1(1) *Definitions.* The following definition applies as used in Iowa Code chapter 544B and this chapter unless the context otherwise requires.

"Official copy" means technical submission for purposes of required approval.

4.1(2) *Competence.*

a. When practicing landscape architecture, a professional landscape architect will act with reasonable care and competence and will apply the technical knowledge and skill that is ordinarily applied by a landscape architect of good standing practicing in the same locality.

b. When designing a project, a professional landscape architect will take into account all applicable state and municipal building laws and regulations. While professional landscape architects may rely on the advice of other professionals (e.g., attorneys, architects, engineers and other qualified persons) as to the intent and meaning of the regulations, once such advice is obtained, a landscape architect will not knowingly design a project in violation of these laws and regulations.

c. A professional landscape architect will undertake to perform professional services only when the professional landscape architect together with those whom the professional landscape architect may engage as consultants are qualified by education, training and experience in the specific technical areas involved.

d. No person will be permitted to practice landscape architecture if, in the board's judgment, upon receipt of medical testimony or evidence, the person's professional competence is substantially impaired by physical or mental disabilities or substance abuse.

4.1(3) *Conflict of interest.*

a. A professional landscape architect will not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If a professional landscape architect has any business association or direct or indirect financial interest that is substantial enough to influence judgment in connection with the professional landscape architect's performance of professional services, the professional landscape architect will fully disclose, in writing, to the client or employer the nature of the business association or financial interest. If the client or employer objects to the association or financial interest, the professional landscape architect shall either terminate such association or interest or offer to give up the commission or employment.

c. A professional landscape architect will not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, a professional landscape architect shall render decisions impartially, favoring neither party to the contract.

4.1(4) *Full disclosure.*

a. A professional landscape architect making public statements on landscape architectural questions will disclose when compensation is being received for making the statements.

b. A professional landscape architect will accurately represent to a prospective or existing client or employer the professional landscape architect's qualifications and the scope of the professional landscape architect's responsibility in connection with work for which the professional landscape architect is claiming credit.

c. If, in the course of work on a project, a professional landscape architect becomes aware of an action taken by the employer or client against the professional landscape architect's advice that violates applicable state or municipal building laws and regulations and that will, in the professional landscape architect's judgment, adversely affect the safety to the public of the finished project, the professional landscape architect shall:

(1) Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations,

(2) Refuse to consent to the decision, and

(3) In circumstances when the professional landscape architect reasonably believes that other actions will be taken, notwithstanding the landscape architect's objection, terminate the professional landscape architect's services with reference to the project. In the case of a termination in accordance with this clause, the professional landscape architect will have no liability to the professional landscape architect's client or employer on account of such termination.

d. A professional landscape architect will not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for licensure or renewal of license.

e. A professional landscape architect will not assist in the application for licensure of a person known by the professional landscape architect to be unqualified with respect to education, training, experience or character.

f. A professional landscape architect possessing knowledge of a violation of these rules by another professional landscape architect will report the knowledge to the board.

4.1(5) *Compliance with laws.*

a. A professional landscape architect will not, in the conduct of landscape architectural practice, knowingly violate any state or federal criminal law.

b. A professional landscape architect will neither offer nor make any payment to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the professional landscape architect is interested.

c. A professional landscape architect will comply with the licensure laws and regulations governing the landscape architect's professional practice in any United States jurisdiction.

4.1(6) *Professional conduct.*

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work will have a professional landscape architect regularly employed in or assigned to that office who has responsible control of such work.

b. A professional landscape architect will not sign or seal drawings, specifications, reports or other professional work for which the landscape architect does not have direct professional knowledge and direct supervisory control, provided, however, that in the case of the portions of professional work prepared by the landscape architect's consultants, licensed under this or another professional licensure law of this jurisdiction, the professional landscape architect may sign or seal that portion of the professional work if the landscape architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. A professional landscape architect will neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the professional landscape architect is interested. Nothing in this rule shall prohibit a professional landscape architect from providing landscape architect services as a charitable contribution.

d. A professional landscape architect will not engage in conduct involving fraud or wanton disregard of the rights of others.

4.1(7) *Seal and certificate of responsibility.*

a. Each professional landscape architect will procure a seal with which to identify all technical submissions issued by the professional landscape architect for use in Iowa as provided in Iowa Code section 544B.12.

b. Description of seal. The diameter of the outside circle shall be approximately 1¾ inches. The seal will include the name of the professional landscape architect and the words "Professional Landscape Architect, State of Iowa." The professional landscape architect's Iowa license number will be included. The seal shall substantially conform to the sample shown below.

c. A legible rubber stamp, an electronic image or other facsimile of the seal may be used.

d. Each technical submission to a client or any public agency, hereinafter referred to as the official copy, will contain an information block on its first page or on an attached cover sheet with application of a seal by the professional landscape architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature will be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional will be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block shall substantially conform to the sample shown below:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed professional landscape architect under the laws of the state of Iowa. _____

License Expires:	Printed or typed name or secure electronic signature _____ Signature _____ Pages or sheets covered by this seal: _____ _____

e. The information requested in each information block must be typed or legibly printed in permanent ink or digital signature as defined in or governed by Iowa Code chapter 554D on each official copy. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to a landscape architecture document, that security procedures are adequate to (1) verify that the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It will be the responsibility of the professional landscape architect who signed the original submission to forward copies of all changes and amendments to the technical submission, which shall become a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county or municipal building code.

g. A professional landscape architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

h. The seal appearing on any technical submission will be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on that seal.

4.1(8) *Communications.* A professional landscape architect will, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the professional landscape architect.

193D—4.2(544B,17A) Receipt of complaints. The board will receive and review all complaints which the board reasonably believes indicate that a licensee may have committed an act that is cause for disciplinary action.

4.2(1) *Complaints.* Any person may file a complaint with the board charging that a licensee may have committed an act that is in violation of applicable law or rules. The complaint will be written and signed by the complainant and accompanied with substantial evidence indicating when, where, and how the licensee committed the violation. All complaints filed with the board will be privileged and held confidential pursuant to Iowa Code section 272C.6(4) by all board members, peer review committee members and staff. A person filing a complaint will receive immunities in accordance with Iowa Code section 272C.8.

4.2(2) *Board-instigated complaints.* Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be opened and an investigation begun to determine if a licensee may have committed an act that is in violation of applicable law or rules.

193D—4.3(544B,17A) Peer review committee. At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decision by conducting an investigation(s) of the complaint.

4.3(1) *Makeup of the peer review committee.* The committee will consist of one or more professional landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

a. Members of the board.

b. Close relatives of the alleged violator(s) or complainant.

c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

4.3(2) *Authority.* The committee's investigation will be limited to interviewing of complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community. The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

4.3(3) *Compensation.* Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

193D—4.4(544B,272C) Investigation report of complaints.

4.4(1) *Board consideration of report to determine further action.* Upon completion of the investigation, the investigator(s) will prepare for the board's consideration a report containing the position or defense of the licensee so the board may determine what further action is necessary. The board may:

a. Order the matter be further investigated.

b. Allow the licensee who is the subject of the complaint an opportunity to appear before the designated discipline committee for an informal discussion regarding the circumstances of the alleged violation.

c. Determine there is no probable cause to believe that a violation has occurred and close the case.

d. Determine there is probable cause to believe that a violation has occurred.

4.4(2) *Informal discussion.*

a. An informal discussion is intended to provide a licensee an opportunity to share the licensee's account of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee is not required to attend an informal discussion. Because disciplinary investigations are confidential, the licensee cannot bring other persons to an informal discussion, but licensees may be represented by legal counsel.

b. Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion must therefore waive the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not waive the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

c. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the

event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

193D—4.5(544B,272C) Dispensation. The board will make findings of fact and conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Revoke the professional landscape architect's license.
3. Suspend the professional landscape architect's license as authorized by law.
4. Impose civil penalties, the amount of which will be set at the discretion of the board but will not exceed $1,000. Civil penalties may be imposed for any of the disciplinary violations of Iowa Code sections 544B.15, 272C.9(2), 272C.9(3), and 272C.10 and these rules or for repeated offenses.
5. Impose a period of probation, either with or without conditions.
6. Require reexamination, using one or more parts of the examination given to professional landscape architectural licensee candidates.
7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation or warning.
9. Issue a consent order.
10. Accept voluntary surrender of license. Voluntary surrender of a license is considered a disciplinary action.

These rules are intended to implement Iowa Code chapters 17A and 544B and Executive Order 10.