



REGULATORY AGENCY ACTION

tics on the limited-term positions and request that they become permanent in the 1994-95 budget if the studies show the workload to be permanent and ongoing. The BCPs have been forwarded to the Governor's office for inclusion in the Governor's budget which was presented to the legislature in January.

BHFTI Creates Enforcement Coordinator Position. The Bureau recently established the post of Enforcement Coordinator; this position will be filled by Dennis Weber, who currently serves as Staff Services Analyst and will maintain his present duties as well. The Coordinator will assume direct responsibility for analyzing and developing procedures to address enforcement paperwork backlogs. This organizational change is aimed at streamlining the handling of inspection-generated paperwork, so that the Bureau may increase revenues and improve follow-up of enforcement in the field. All inspectors will remain under the direct supervision of the Deputy Chief.

LEGISLATION:

AB 1749 (Johnson) would revise to an unspecified amount the penalty fee for failure to timely renew a BHFTI license prior to its expiration. This two-year bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

RECENT MEETINGS:

At its December 11 meeting, the Advisory Board elected Nurhan Donikian as its 1992 Chair and Tom Wilterink as Vice Chair.

FUTURE MEETINGS:

June 9 in San Diego.

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode
(916) 445-4954

The Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. To qualify for a license, an applicant must successfully pass the written exam of the national Council of Landscape Architectural Registration Boards (CLARB). In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture.

Authorized in Business and Professions Code section 5615 *et seq.*, BLA consists of seven members. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board. Currently, the Board has only six members; the southern California landscape architect seat is vacant. Board members are appointed to four-year terms. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Low Pass Rate on 1991 Exam Reignites CLARB Membership Controversy. At BLA's October 18 meeting, Executive Officer Jeanne Brode reported that the 1991 pass rate for California takers of CLARB's Uniform National Examination (UNE), recently renamed the Landscape Architects Registration Examination (LARE), was 9%. Although some Board members noted that pass rates in other states were as low as 0% and that the national pass rate was 6%, the Board expressed concern regarding this low pass rate and requested that Dr. Norman Hertz from the Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) review and evaluate CLARB's scoring procedure and item analyses for the examination and report his findings at BLA's December meeting.

The low pass rate has reignited the controversy over whether BLA should remain with CLARB and use its LARE, or break away and contract with an exam vendor to write a new test for use in California. During the past few years, BLA's dissatisfaction with CLARB's test led it to demand that CLARB perform an occupational analysis of the practice of landscape architecture and overhaul its 1992 test to comport with the results of the analysis. To keep CLARB honest, BLA hired Psychological Services, Inc. (PSI), an independent consultant, to perform a task analysis specific to California licensees. During

the summer of 1991, CLARB promised to revamp its exam by June 1992 and to undertake future occupational analyses on a regular basis to keep the exam current. Based on CLARB's promises, a statutorily-required analysis of the costs of developing a new California exam, and PSI's survey indicating that the issue of license reciprocity is very important to California licensees, BLA decided to stay with CLARB for at least one more year at its August meeting—a decision which may now be reconsidered. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 82-83; Vol. 11, No. 2 (Spring 1991) p. 79; and Vol. 11, No. 1 (Winter 1991) p. 66 for extensive background information.)

At BLA's December 6 meeting, DCA Director Jim Conran addressed the Board, expressing serious concern regarding the low pass rate. He observed that an exam which fails 91% of the candidates raises the question whether the exam is being used to restrict entry into the profession by testing for non-job-related knowledge. Conran informed the Board members that several legislators are interested in sunseting BLA, but that he has persuaded them to give the Board a chance to make rectifying changes. Conran also directed the Board to provide him with a report on the 1991 exam pursuant to his authority under section 127 of the Business and Professions Code.

Also at the Board's December meeting, CTU's Dr. Norman Hertz reported back to the Board, stating that his review of the 1991 exam materials provided by CLARB indicated that the procedures used by CLARB to establish the passing score were unacceptable, and that CLARB had failed to provide the raw statistical data necessary to enable CTU to properly adjust the passing score. In addition, Dr. Hertz opined that many questions on the objective portions of the exam do not meet California's requirements for job-relatedness. Dr. Hertz suggested that BLA conduct a passing score workshop in which eight to ten licensed landscape architects would review the examination. If questions on the examination do not relate to the practice of landscape architecture, they should be deleted and the exam score reevaluated. Dr. Hertz offered CTU's assistance in conducting a passing score workshop, performing statistical analyses, and recommending a passing score that is legally defensible. Although modification of the exam or the passing score may result in reciprocity problems for 1991 California examinees, the Board agreed to have the 1991 exam reviewed



and to readjust the passing score as appropriate.

Dr. Hertz also stated that although CLARB's 1992 exam represents some content improvement over the 1991 examination, it contains many questions that are improper for licensing examinations in California. According to Dr. Hertz, the examination will be suitable for use in California only if CLARB agrees to certain conditions. Dr. Hertz stated that if CLARB does not agree to the conditions, CTU would assist the Board in writing a request for proposals, evaluating the proposals, and in administering the contract for a vendor other than CLARB to provide the examination. At BLA's December meeting, the Board discussed the seven conditions identified by CTU, which are as follows:

(1) Members of CLARB's Examination Committee should be representative of practice in the following areas: type of practice, location of practice, gender, and ethnicity. Also, a significant number of committee members should have received their licenses within the last five years. Dr. Hertz noted that CLARB's use of landscape architects who began practice twenty or thirty years ago to establish the passing score is one cause of the faulty scoring process and low pass rate.

(2) Examination questions and performance problems must be reviewed for job-relatedness and psychometric considerations by CTU staff as well as licensed landscape architects from California. The questions and problems that fail to meet the standards should not be used in the examination. CTU, in collaboration with licensed landscape architects, should have the authority to require CLARB to remove unacceptable questions from the examination.

(3) Criterion-referenced passing scores must be established using a methodology such as the Angoff method. Descriptive statistics and estimates of reliability must be provided by CLARB so that CTU and BLA may evaluate the validity of the recommended passing score. The participants in the process must be representative of practice and include practitioners licensed within the past five years.

(4) Performance problems must be scored by at least two evaluators. If there is a disagreement on the scores assigned, the difference in scores must be resolved by a second scoring and, if necessary, a master grader should intervene to resolve the differences.

(5) The multiple-choice questions should be pretested to identify and repair the ones that are flawed. After the

examination is administered, item analyses should be performed and the results reviewed to identify questions that are unacceptable.

(6) The performance problems must be pretested under examination-like conditions to identify potential problems. Licensed landscape architects—other than the ones who pretested the examination—must score the examination using guides to identify problems with the scoring guides or the examination. The time required to complete the examination must be carefully monitored and sufficient time allotted during the examination.

(7) CLARB's use of a non-compensatory examination model should be replaced with a compensatory model. A noncompensatory model, which requires a candidate to pass each and every section in order to pass the examination, is acceptable only if competence is critical in each content area and the content areas are statistically independent; according to CTU, the practice of landscape architecture does not meet the criteria for a noncompensatory model.

CLARB Executive Director Buck Chaffee was present at the Board's December meeting, and his initial reaction to several of the conditions was not favorable. Chaffee stated that the 1992 LARE is 80% completed, such that it cannot be changed to a compensatory model. He also remarked that CLARB would not remove a question from the exam at the request of any one state board because 43 states use the test, and variations in the test may affect reciprocity agreements between states; however, CLARB could provide BLA with the raw data on each question and BLA could remove offensive questions and recalculate the scores on its own (thus creating potential reciprocity problems for its examinees). Finally, Chaffee noted that acceding to BLA's conditions would be tantamount to giving California a "retroactive veto power" over the LARE.

Following a discussion of the proposed conditions, the Board tentatively agreed to continue contract negotiations with CLARB for the 1992 examination, but to amend the contract to include conditions 3, 4, 5, and 6.

Examination Appeals Process Reviewed. As the pass rate on CLARB's exam decreases, the number of exam appeals lodged by licensure applicants increases. At its October meeting, the Board discussed its appeals process. Under current regulations, any person who has failed the graphic performance section of the exam may review that portion of his/her exam at the Board's

Sacramento office and file an appeal with BLA. Executive Officer Jeanne Brode explained that BLA currently hires two master graders to review appeals, at a total cost of \$3,000 per exam. The Board directed staff to draft statutory amendments to section 5681 of the Business and Professions Code authorizing BLA to collect an appeal fee, and regulatory amendments to section 2623, Title 16 of the CCR, to limit appeals to examinees who have received a failing score which is within one standard error of measurement of the minimum passing score. The Board was scheduled to discuss the proposed amendments at its December meeting; however, that discussion was postponed to its January 17 meeting.

OAL Rejects BLA's Interpretation of Licensing Requirements. On October 16, the Office of Administrative Law (OAL) approved in part and disapproved in part BLA's regulatory action repealing existing section 2620, adopting new sections 2620 and 2620.5, and amending section 2649, Title 16 of the CCR. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 82; Vol. 11, No. 2 (Spring 1991) p. 79; and Vol. 11, No. 1 (Winter 1991) pp. 65-66 for background information.) OAL approved section 2620.5, which establishes requirements for an approved extension certificate program, and the amendments to section 2649, which revise certain fees collected by the Board. However, OAL disapproved BLA's amendments to section 2620, which interpret the statutory eligibility requirements for taking the landscape architect examination.

As presented to OAL, new section 2620 would have specified the maximum credit that BLA will allow toward the statutory, six-year requirement for various education, training, and practice experiences; explained what qualifies as "a degree from a school of landscape architecture approved by the board"; and, if a candidate relies upon educational experiences, required a minimum of two years of "training" experience—at least one of which occurs under the direct supervision of a licensed landscape architect and after the applicant's "graduation from an educational institution." OAL concluded that several provisions of proposed section 2620 which govern credit that will be granted for specified training and practice experiences are inconsistent with and in conflict with Business and Professions Code section 5650, which states that "any person, over the age of 18 years, who has had six years of training and experience in actual practice of landscape architec-



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tural work shall be entitled to an examination for a certificate to practice landscape architecture." OAL noted that while BLA has the discretion to decide what constitutes "training and experience in actual practice of landscape architectural work," its interpretation of the meaning of that phrase must be a reasonable one which is consistent with existing statutory authority. Based on its finding that several of the provisions of section 2620 require candidates to have more than six years of training and experience in actual practice of landscape architectural work, OAL rejected the proposed section as inconsistent with Business and Professions Code section 5650.

BLA revised section 2620 to address OAL's concerns and released the modified text on November 14 for a 15-day public comment period. Although BLA was scheduled to consider the adoption of the new language at its December 6 meeting, the item was carried over until its January 17 meeting.

Other Regulatory Changes. On October 18, BLA conducted a public hearing on its proposed amendments to sections 2610, 2649, and 2671, Title 16 of the CCR. Proposed amendments to section 2649 would increase specified fees; the amendments to section 2671 would require that a landscape architect include his/her name and the words "landscape architect" in all public presentations; and the amendments to section 2610 would change the deadline for filing an application for the licensing exam from the current requirement of at least ninety days prior to the date of the examination to on or before March 15 of the year in which the application is made. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 83 for background information.)

Following the hearing, the Board adopted the amendments to sections 2610 and 2671; these amendments await review and approval by OAL. BLA postponed adoption of the amendments to section 2649 until its January 17 meeting.

ASLA Request for Determination Still Pending. At this writing, OAL has not released its response to a request for a regulatory determination submitted by the American Society of Landscape Architects (ASLA). Specifically, ASLA questions BLA's policy which allows applicants for its licensing test to qualify for the examination by meeting either education or experience requirements. OAL will determine if this policy is a "regulation" as defined in Government Code section 11342(b), and thus subject to the requirements of the Administrative Procedure Act. (See CRLR Vol.

11, No. 4 (Fall 1991) p. 83 for background information.)

LEGISLATION:

AB 1996 (Campbell). Under existing law, in any action for indemnity or damages arising out of the professional negligence of a person licensed as a professional architect, engineer, or land surveyor, the plaintiff's attorney is required to attempt to obtain consultation with at least one professional architect, engineer, or land surveyor who is not a party to the action; the attorney is then required to file specified certifications. This bill would specify that these provisions also apply to actions arising out of the professional negligence of landscape architects. This bill is pending in the Assembly Judiciary Committee.

SB 173 (Bergeson). Under existing law, state and local agency heads may contract for specified services based on demonstrated competence and professional qualifications rather than competitive bidding. This bill would add landscape architectural services to the list of specified services. SB 173 is pending in the Senate Transportation Committee; however, its provisions were amended into **SB 805 (Bergeson)**, which was signed by the Governor on August 2 (Chapter 314, Statutes of 1991).

Proposed Legislation. At its October meeting, BLA agreed to seek urgency legislation to eliminate the provision in Business and Professions Code section 5651 which requires its written examination to include testing of an applicant's knowledge of California plants and environmental conditions, irrigation design, and California laws relating to the practice of landscape architecture.

RECENT MEETINGS:

At its October 18 meeting, Executive Officer Jeanne Brode announced that the Department of Consumer Affairs declined to carry a continuing education (CE) bill for the Board during 1992. Thus, the Board created a task force consisting of one professional member, one public member, one Education Committee member, and three representatives from ASLA to formulate recommendations for possible legislation establishing statutory authority to require CE of BLA licensees.

Also at its October meeting, the Board discussed revising the definition of a landscape architect, noting that staff had received several letters from landscape architects urging such a change. As stated in Business and Professions Code section 5615, a person who practices landscape architecture is one who

performs professional services for the purpose of landscape preservation, development, and enhancement, such as consultation, investigation, reconnaissance, research, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation. Section 5615 also provides that the practice of a landscape architect may include investigation, selection, and allocation of land and water resources for appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation, review, and analysis of master plans for land use and development; production of overall site plans, landscape grading and drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; and field observation and inspection of land area construction, restoration, and maintenance. ASLA lobbyist Dick Ratcliff stated that he participated in the drafting of the current definition and is aware of the potential for turf battles among various professions including contractors, engineers, and architects, should this matter be revisited.

Also at its October 18 meeting, BLA elected Larry Chimbole as Board president and Dan Johnson as vice-president for 1992.

FUTURE MEETINGS:

April 17 in Sacramento.
July 17 in Burbank.
October 16 in Sacramento.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Ken Wagstaff
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Toll-Free Complaint Number:
1-800-MED-BD-CA

The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs (DCA). The Board, which consists of twelve physicians and seven nonphysicians appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.