

# Board for Professional and Occupational Regulation (BPOR): Study of the Regulatory Status of Landscape Architects ASLA Virginia | 9.4.20

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## Call for Action!

## BPOR Public Comment Period is open: 9/1 – 9/30

BPOR is currently undertaking a study to determine if landscape architects should continue to be licensed. The study will be completed in December 2020. BPOR is inviting public comments regarding the regulatory status of landscape architects.

Please see the BPOR [Notice for Public Comments](#) on the need to regulate select professions/occupations including landscape architects.

## Public Comment is open through 9/30/20.

ASLA Virginia and ASLA Potomac are calling on Virginia and Potomac chapter members as well as non-ASLA landscape architects to:

1. Contact your clients, architects and engineers that you work with, developers, government officials, and others who value the work of licensed landscape architects and ask them to submit their comments including stating support for continued licensure of landscape architects. Include this link: [Notice for Public Comments](#) to access the General Notice. The General Notice includes a link “Comment Forum” that provides access to the Public Comment portal; and

2. Please enter your personal statement of support for continued licensure of landscape architects via the Public Comment Portal.

Please see the Talking Points below. Please feel free to use them and also to share them with your colleagues, clients, architects, engineers, and others who you are requesting to make a public comment.

For more information on the study see the JLARC REPORT SUMMARY INFORMATION and BPOR STUDY SUMMARY below the Talking Points.

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### Talking Points

- DO NOT discuss small-scale garden design, residential design, or planting design.

The following talking points in priority order are intended to support individuals submitting public comments via the BPOR Public Comment portal.

### **Protection of Public Health, Safety, and Welfare**

- Landscape architects directly impact public health, safety, and welfare. Licensure is the most appropriate form of regulation to ensure that the public is adequately protected.
- Licensure of landscape architects ensures that professionals are qualified by virtue of their education, experience, and examination.
- Licensure of landscape architects ensures that untrained individuals are prevented from engaging in professional practice that substantially (or significantly) impacts public health, safety and welfare. Licensed landscape architects fulfill educational training and examination requirements that prepare professionals to protect the public from both physical and monetary harm.
- Landscape architects are called upon for complex services that require highly technical skills, making it difficult for prospective clients to evaluate the competency of professionals. Licensure as a measure of competence can assist consumers in identifying appropriate professionals for design services.
- The scope of landscape architectural practice includes site plans, plans of development, grading plans, vehicular roadways and pedestrian systems design, stormwater and erosion control plans, and the siting of buildings and structures, all work that localities and federal agencies require to be sealed by licensed professionals. Consequently, the scope of landscape architecture overlaps with other licensed design professionals including architects, engineers, and Class B land surveyors.

### **Fair Competition and Economic Impact**

- Without licensure, landscape architects would likely be prohibited from leading multidisciplinary teams. Currently, landscape architects serve as the prime consultants on projects where they coordinate and administer the services of engineers, architects, and land surveyors.
- Without licensure, landscape architects will be unfairly disadvantaged in the marketplace. Oftentimes, federal, state, and local contracts require the work to be completed by licensed individuals.
- Virginia landscape architects would be excluded from federal, state, and local work in Virginia that requires licensure.
- Licensure of landscape architects is necessary to keep the profession on an equal footing with its related licensed design professions, architecture and engineering. This equality enables landscape architects to lead projects, form certain business partnerships, and serve as principals in multidisciplinary firms.
- Licensure for one profession, and certification, registration, or no regulation for the other, can cause confusion in the marketplace and may be perceived by the consumer as an endorsement of the skill and competence of one profession over the other. Where the professions overlap, it provides a state-sanctioned advantage for one profession over the other. This destroys the competitive, free market in which design professionals compete.

In 2019, an ASLA Virginia Study Response Team (Team) was formed to defend the licensure status of landscape architects including, but not limited to, the collection of information, coordination of the various stakeholder groups as well as ASLA Virginia members, preparation of talking points, and the preparation and submission of ASLA Virginia’s justification for continued licensure. The Team will prepare and submit a written report on the justification for the continued licensure of landscape architect to the BPOR study team for its use in determining if landscape architects should remain licensed and to support the BPOR study team’s final report.

The Team is currently collaborating with ASLA Potomac chapter and is supported by ASLA Virginia chapter EXCOM members and the chapter Executive Director, the chapter lobbyist, ASLA National, CLARB, and the Virginia Tech and University of Virginia landscape architecture programs.

Please look for future e-blasts and information posted on the ASLA Virginia chapter website.

For more information contact:

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## Background Information

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### JLARC Report Summary Information

#### Joint Legislative Audit and Review Commission Report

In 2018, the Joint Legislative Audit and Review Commission (JLARC) submitted a report to the Governor and General Assembly of Virginia addressing the operations and performance of the Department of Professional and Occupational Regulation (DPOR). That report entitled *Report to the Governor and the General Assembly of Virginia, Operations and Performance of the Department of Professional and Occupational Regulation, Joint Legislative Audit and Review Commission (JLARC), 2018*, included a recommendation that the Board of Professional and Occupational Regulation (BPOR)—the board that oversees DPOR—conduct a study addressing the continued need for regulating landscape architects.

Link to report including a summary, full report, and an outline of recommendations: <http://jlarc.virginia.gov/2018-dpor.asp>

Following below is the JLARC report recommendation addressing landscape architects:

#### **RECOMMENDATION 2**

*The Board for Professional Occupational Regulation (BPOR) should review the need for continued regulation of soil scientists, waste management facility operators, and **landscape architects** [emphasis added]. In carrying out these reviews, BPOR should follow the guidelines set in § 54.1-311 of the Code of Virginia for determining the need for regulation and the appropriate degree of regulation for an occupation. BPOR should begin reporting its evaluation findings to the General Assembly by December 31, 2019 and complete these evaluations by December 31, 2020. (Chapter 2)*

Following is the section of the JLARC report concerning the justification for studying the regulatory status of landscape architects:

#### **Landscape Architects**

*Landscape architects pose some risk to the public, but regulation does not effectively address risks. Landscape architects design outdoor spaces for business and residential developments, campuses, recreational facilities, parks, traffic corridors, and other open areas. They develop plans for grading and drainage, retaining walls, and locating buildings, roads, walkways, and plants (trees, shrubs, and flowers). A poorly designed feature, such as a hill with an overly steep grade, could create a safety hazard. Other design flaws, such as improper drainage, could lead to property or environmental damage. However, individuals in other unregulated occupations, such as landscape designers, are allowed to perform largely the same work and present the same risks. The existence of unregulated occupations performing the same work suggests state regulation of landscape architects does not fully address risks.*

*There is little evidence that landscape architects are improperly practicing their occupation in Virginia. Over the past 10 years, there were four complaints resulting in a DPOR investigation, and DPOR found only one violation of rules and one case of unlicensed activity. The occupation is regulated to some extent in all 50 states, but seven states assessed the need for regulation and concluded that landscape architects should either be voluntarily certified or not regulated at all. A 1999 DPOR study concluded that “a licensure program for landscape architects is not warranted” because an existing voluntary certification was sufficient to protect the public.*

*Licensing provides consumers and prospective employers with assurance that a landscape architect meets qualification standards. However, the same assurance could be gained through a less restrictive voluntary certification program, similar to what Virginia had in place until 2010.*

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## **Board of Professional and Occupational Regulation Study Summary**

The BPOR study team commenced work in 2019. In late 2019, the ASLA Virginia Government Affairs Committee monitored the work of the BPOR study team and communicated with the executive director of BPOR. ASLA Virginia formed a Study Response Team and that team is responsible for leading the Chapter’s response to the BPOR study.

BPOR will undertake the study utilizing section § 54.1-311 of the Code of Virginia for determining the need for regulation and the appropriate degree of regulation for an occupation.

Link to section § 54.1-311 of the Code of Virginia:

<https://law.lis.virginia.gov/vacode/title54.1/chapter3/section54.1-311/>

In early 2020, the BPOR study team submitted an *Interim Report to the General Assembly, Evaluation for the Need for Continued Regulation of Certain Professions and Occupations as Recommended by the Joint Legislative and Audit Review Commission, Board for Professional and Occupational Regulations (BPOR)*, December 31, 2019. This report addressed the scope of the BPOR study and provided limited information on the scope of practice and related information concerning landscape architects. That report did not include any recommendations concerning changes to the regulatory status of landscape architects.

The BPOR study period will conclude in late 2020 with a final report submitted to the Governor and General Assembly prior to 2021.

The BPOR study team continues to collect information with scheduled public hearings planned across Virginia that will provide opportunities for information gathering including public testimonies.

Note the General Assembly has the sole power and authority to regulate or deregulate a profession or occupation and to revise the regulatory status of a profession or occupation.

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