

**TITLE 16. CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**Substantial Relationship Criteria, § 2655
Criteria for Rehabilitation, § 2656**

NOTICE IS HEREBY GIVEN that the California Architects Board (Board) is proposing to take the action described in the Informative Digest.

Public Hearing

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Person in this Notice.

Comment Period

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than November 25, 2019, or must be received by the Board at the hearing, should one be scheduled.

Availability of Modifications

The Board, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference

Pursuant to the authority vested by sections 481, 482, 493 and 5630 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 141, 475, 480, 481, 482, 488, 490, 493, and 5630 of said Code, the Board is considering changes to sections 2655 and 2656 of article 1 of division 26 of title 16 of the California Code of Regulations (CCR).

Informative Digest:

BPC section 5630 authorizes the Board to adopt, amend, or repeal such rules and regulations as are reasonably necessary, among other things, to establish rules or professional conduct that are not inconsistent with state or federal law and carry out the

provisions of the landscape architects practice law. In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, BPC section 481 will require the Board to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 will require the Board to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. In addition, BPC section 482 will require the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

CCR section 2655 establishes the criteria for determining when a criminal conviction is substantially related to the qualifications, functions and duties of a landscape architect. CCR section 2656 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, or petition for reinstatement of a landscape architectural license on the ground of a criminal conviction.

The passage of AB 2138 requires CCR sections 2655 and 2656 be updated to clearly specify the criteria the Board uses when making a substantial relationship determination for an applicant's or licensee's criminal conviction or formal discipline by another licensing Board and evaluating the rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of a landscape architect license.

The Board is proposing the following changes:

Amend Title 16 CCR Section 2655 – Substantial Relationship Criteria

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of landscape architecture.

Amend Title 16 CCR Sections 2656 – Criteria for Rehabilitation

The proposed regulation would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the

applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants or licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial of discipline was based on something other than a conviction.

Policy Statement Overview/Anticipated Benefits of Proposal

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed professionals.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board anticipates that there may be an increased cost to the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved.

Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation affects only landscape architect licensure candidates and licensees who are subject to discipline, and does not affect landscape architectural businesses.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily

incur in reasonable compliance with the proposed action, as the intent of AB 2138 is less restriction from licensure for individuals with criminal convictions or discipline.

Effect on Housing Costs: None

Effect on Small Business

The proposed regulations may affect small businesses who would have a greater pool of licensed professionals from which to hire.

Result of Economic Impact Assessment/Analysis:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals. Landscape architectural businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

Consideration of Alternatives

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

To date, the following options were considered by the Board and rejected:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.

- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2420 Del Paso Road, Suite 105, Sacramento, California 95834.

Initial Statement of Reasons and Information

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

Text of Proposal

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all of the information upon which the proposal is based may be obtained at the hearing or prior to the hearing upon request from the California Architects Board, Landscape Architects Technical Committee at 2420 Del Paso Road, Suite 105, Sacramento, California 95834 or by telephoning the Contact Person listed below.

Availability and Location of the Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

Contact Person

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Kourtney Nation
Address:	2420 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	(916) 575-7237
Fax No.	(916) 575-7283
E-Mail Address:	kourtney.nation@dca.ca.gov

The backup contact person is:

Name:	Trish Rodriguez
Address:	2420 Del Paso Road, Suite 105 Sacramento, CA 95834

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Fax No. (916) 575-7283
E-Mail Address: latc@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.latc.ca.gov.