

### **DIRECT DEREGULATION OF OCCUPATIONS**

Licensure deregulation aims to eliminate the state government's 10th Amendment right and responsibility of regulating a profession, occupation, or trade. It is based on a determination by elected officials that the public (and profession, occupation, or trade) is not well served by such government oversight. Legislative inaction to continue licensing an occupation can have the same effect as deregulation if boards and regulatory oversight are subject to "automatic" sunset or expiration.

Proponents of deregulation believe that occupational licensure limits an individual's freedom of enterprise, imposes burdens that outweigh public protection or benefit, and unfairly limits competition and entrance into the occupation. These entities believe that market forces or a less restrictive form of regulation, can provide adequate public protection. However, professions that have a significant, substantial, and documented threat to public health, safety, and welfare, which includes landscape architecture, necessitates a state licensing regime.

#### **Key Elements of Concern**

- **Protecting the public from harm is a constitutional right (10th Amendment) and responsibility of state government.**
  - Due to the technical nature of various professions, local, state, and federal governments require the use of licensed professionals on certain projects.
  - Deregulation of highly technical and skilled professions, such as landscape architecture, architecture, and engineering, can lead to incompetent practice resulting in serious injury, death, and/or severe economic hardships for individuals, communities, and governments.
- **State government oversight of professions and occupations should only be implemented to protect public health, safety, and welfare.**
  - State regulation should not protect market participants from competition or restrict entry into the occupation.
- **Occupational licensing ensures that licensed practitioners are competent, especially in the case of technical professions.**
  - Many professions, including landscape architecture, are complex, nuanced, and poorly understood by the general public.
  - Licensing provides the client (both private and public entities such as local governments), insurers, and the general public assurance that an individual has achieved a certain level of competence.
  - Education, experience, and examination requirements establish a minimum level of competence needed to protect public health, safety, and welfare.
- **Licensing boards provide a check and balance on the profession.**
  - Licensing Boards have technical expertise and can provide an objective forum to hear consumer complaints of malpractice and, in most cases, would have the ability to fine or sanction bad actors.

### **INTERSTATE COMPACT LEGISLATION: TEMPORARY LICENSURE**

In 2017 the Federal Trade Commission stated, “License portability restrictions often prevent otherwise qualified people from marketing their services across state lines or when they move to a new state. These types of restrictions are especially hard on military families, who often face the financial and administrative burdens of applying for a new license with each move across state lines.”

In 2018, several states introduced interstate compact legislation establishing temporary licensure to address the issue of mobility. An interstate compact is a multistate agreement, created through legislation, that “contractually” binds the participating states to agreed-upon and standardized regulatory guidelines and standards. These bills are supported by the federal administration, the Federal Trade Commission, and multiple governors. The 2018 interstate compact bills introduced in South Dakota, Arizona, and Missouri would allegedly address worker shortages by allowing members of licensed occupations from one state to temporarily practice in another state. These proposals allowed for most individuals an 18-month license (renewable) and a 24-month license for military spouses.

The landscape architecture profession is already a mobile profession, with more than 50% of license holders practicing in more than one state.

#### **Key Elements of Landscape Architecture’s Mobility Standards**

- Landscape architecture is one of only 60 professions licensed in all 50 states and the District of Columbia.
- Landscape Architecture licensing laws have consistent licensing requirements.
  - All licensing jurisdictions readily accept an accredited LA degree, four years (or less) of experience, and passage of the Landscape Architect Registration Examination (L.A.R.E.) as qualification for licensure.
  - Ninety-two percent of LA licensees meet these standards (the others may have non-LA degrees such as architecture)
  - The Council of Landscape Architectural Registration Board’s Council Record serves as an Internet-based repository for credentials, allowing quick transfer of licensee information and records from one jurisdiction to another.

#### **Key Elements of Concern for Temporary Licensure Legislation**

- In the case of landscape architecture, an interstate compact for temporary licensure would create unnecessary administrative burdens.
  - The profession already has consistent licensure requirements and an existing efficient and effective method for granting reciprocity.
- If not enacted carefully, these laws could cause potential harm to public health, safety, and welfare due to dilution of professional standards to the least common state-to-state denominator.
  - Proposed laws don’t consider the complexities involved in conveying disciplinary actions from jurisdiction to jurisdiction.

### **OCCUPATIONAL LICENSING REVIEWS/STUDIES**

Legislation or Executive orders may direct or establish an entity to oversee/implement a study on occupational licensing reform, including the possibility of recommending licensing deregulation. These laws/orders are broadly focused on occupational licensing reform and boards, including those which impact landscape architecture.

The studies, committees, commissions, or boards created by these bills or executive orders are tasked with various combinations and levels of reviewing and making recommendations on state agency regulations or board licensing actions. Proponents believe these reviews/studies ensure that the work of the board is based on a clearly articulated state policy and that the occupational license is necessary for the protection of public health, safety, and welfare. Proposed recommendations usually include sunrise or sunset provisions, sometimes as often as every three years; reviews of board regulations, sometimes as frequently as every year; and increased oversight of occupational regulation by creating new regulation approval processes.

#### **Key Elements of Concern**

- **Reviews are not necessarily harmful and can offer important opportunities.**
  - Sunset laws that periodically review the purpose and functions of state agencies to determine whether to continue, revise, consolidate, or terminate licensing laws and boards is a public good.
  - These reviews may also offer the opportunity to make improvements to existing licensing laws.
- **The reviewing entity (boards/commissions), whether legislative or gubernatorial appointed, should be fairly balanced in their construction and offer the opportunity for input by the public as well as regulators.**
  - Economic interests should not supersede the interest of the protection of public health, safety, and welfare.
- **Study recommendations, if designed improperly, may increase threats to public health, safety, and welfare.**
  - Recommendations may dilute professional standards, increasing potential harm to the public, if decisions issued by the oversight body run counter to the expert judgments of licensing boards.
  - Recommendations may create greater administrative burdens on regulatory boards that are costly and time intensive.
    - For example, the creation of one central agency for approving all state licensing board requests for approvals or regulation changes will likely result in a much longer process for approval of occupational regulation changes.

### **OCCUPATIONAL LICENSING CONSUMER CHOICE ACT**

The Occupational Licensing Consumer Choice Act is model legislation that permits any individual to practice a profession or occupation without a valid state occupational license, so long as that individual discloses that fact to prospective consumers. Furthermore, the model law would allow an individual practicing a profession or occupation without a valid state license to assert the disclosure as a judicial defense to any regulatory enforcement of state occupational licensing laws and regulations.

Proponents of the Consumer Choice Act believe that professional and occupational licensure limits an individual's freedom of enterprise, imposes regulatory burdens that outweigh public protection or benefit, and unfairly limits competition and entrance into professions and occupations. Proponents argue this model act gives entrepreneurs, business owners, and individuals the economic freedom to pursue and operate their desired profession or occupation unconstrained from the regulatory burdens of state licensure.

The profession of landscape architecture opposes the Consumer Choice Act model as too broadly permitting individuals to practice professions that have a significant, substantial, and documented threat to public health, safety, and welfare; including landscape architecture, which necessitates a state license to protect public health, safety, and welfare.

#### **Key Elements of Consumer Choice Act**

- Allows individuals to practice a profession or occupation without the need of obtaining a professional license from the state.
- Allows a non-licensed individual to engage in a profession by providing a “non-license disclosure” to consumers prior to entering into an agreement for service.
- Provides defense to the enforcement of any licensing regulation, civil or criminal, if a “non-license disclosure” was properly rendered.
- Provides that the Consumer Choice Act supersedes all other statutory provisions of the state.

#### **Key Elements of Concern**

- **States have the constitutional right and responsibility to protect the health, safety, and welfare of the public.**
  - The Consumer Choice Act attempts to elevate an individual's freedom of enterprise over a state's right to protect the collective public's health, safety, and welfare.
- **The Model Act is written to supersede all other statutory provisions of the state.**
  - The Model essentially deregulates highly technical and skilled professions, such as landscape architecture, architecture, and engineering, which will lead to incompetent practice resulting in serious injury, death, and/or severe economic hardships for individuals, communities, and governments.
- **Unscrupulous actors will easily be able to practice highly skilled professions that impact the state's public, health, safety, and welfare.**
  - State authorities will have a hard time bringing civil or criminal action against these unscrupulous actors, due to the “non-license disclosure” provision.
  - Unscrupulous actors will have a legitimate defense to any civil or criminal licensing regulation and would be entitled to reasonable costs and attorney's fees incurred in asserting such a defense.

### **RIGHT TO EARN A LIVING ACT MODEL**

A “Right to Earn a Living Act” (RELA) mandates reviews of current licenses using more stringent health, safety, and welfare impact justifications, and establishes a judicial pathway to challenge occupational licensing laws and regulations. RELAs and resolutions have also been introduced as legislation titled: Lawful Occupation Acts, Right to Engage in Occupation Resolutions, or Occupational Regulation Defense Acts.

The landscape architecture profession opposes the RELA model as being too broadly constructed and relies too heavily on an arbitrary hierarchical regulatory method as the answer to occupational entry to practice. The profession of landscape architecture has demonstrably shown through judicial review that the profession fulfills legitimate public health, safety, and welfare objectives. However, the model’s broad construction would permit any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating to landscape architecture to be endlessly challenged. Furthermore, any occupational regulation that is judicially established as necessary to the legitimate public health, safety, or welfare objectives, still couldn’t be justified through the courts findings if one of the arbitrary “less restrictive regulations” could be used instead.

#### **Key Elements of RELA Model**

- Promotes an individual’s fundamental right and economic liberty to pursue a profession, occupation, or trade.
- Requires review of all occupational licensing laws against “legitimate” public health, safety, and welfare objectives.
- Requires the state adopt a “least restrictive regulation” method.
- Promotes and allows challenges to the regulatory system by citizen petitions through the judicial system.
- Shifts the burden of proof from the individual to the state to justify that the regulation is necessary and not burdensome.

#### **Key Elements of Concern**

- **States have the constitutional right and responsibility to protect the health, safety, and welfare of the public.**
  - RELAs attempt to elevate freedom of enterprise over a state’s right to protect the public.
- **The RELA model lacks objective methods for state agencies to determine the “least restrictive regulation” burden.**
  - The hierarchy of regulatory methods established by the bill and lack of precedents may make it difficult for a state agency to determine the appropriate hierarchical level of regulation.
- **Judicial challenges will likely increase as a result of an any individuals right to challenge regulations.**
  - Agency defense against legal challenges will increase costs to the public and reduce levels of public protection services.
- **There are many questions and unknowns when it comes to potential judicial system proceedings and rulings including:**
  - Possible lowering of professional standards could result in increased risk and harm to the public.
  - If each court decision applies only to the individual involved, there are likely to be a number of contradictory court decisions over the same regulation, increasing confusion and uncertainty over the validity of agency regulations.

## ASLA MODEL RESOLUTION IN RECOGNITION OF LANDSCAPE ARCHITECTS

WHEREAS, landscape architecture encompasses the analysis, design, planning, management, and stewardship of the national and built environment; and

WHEREAS, [INSERT NAME OF STATE] and its citizenry benefit from the licensed practice of landscape architecture, assuring the design of healthy, equitable, safe, and resilient public and private outdoor spaces; and

WHEREAS, landscape architects, as licensed professionals, have a responsibility to protect public health by creating accessible spaces such as public plazas, parks, schools, residential common areas, playgrounds, and trails that lead to active lifestyles and healthy communities; and

WHEREAS, landscape architects, as licensed professionals, have a responsibility to protect public safety by applying land design skills, technical knowledge, and conservation techniques that ensure the safety of individuals and communities; and

WHEREAS, landscape architects, as licensed professionals, have a responsibility to protect public welfare through the purposeful design of public and private spaces that provide economic, social, and environmental benefits for people of all ages and abilities to enjoy; and

WHEREAS, landscape architects are licensed in all 50 states; and

WHEREAS, landscape architect licenses are issued by the [INSERT BOARD NAME] to those who have met the specified education, examination, and experience requirements necessary for protecting public health, safety, and welfare; and

WHEREAS, science, technology, engineering, and mathematics (STEM) knowledge is at the core of the professional practice of landscape architecture and informs landscape architects as innovators, educators, researchers, and leaders who can solve the most pressing challenges facing [INSERT STATE NAME] communities; and

WHEREAS, landscape architects promote security and safety through transportation design and planning of multi-use transportation corridors that accommodate all users, including pedestrians, bicyclists, motorists, people with disabilities, and people who use public transportation; while also protecting sidewalks, public plazas, and other vulnerable outdoor areas from potential attackers and security threats; and

WHEREAS, landscape architects are leaders in creating resilient and green infrastructure designs addressing erosion and sediment control, stormwater management, and strategies to mitigate the effects of sea level rise and flood waters, thus allowing communities to better withstand and respond to severe weather events and lessening the need for state and local funds and resources in disaster recovery efforts; and

WHEREAS, landscape architects are leaders in creating sustainable landscapes, helping to reduce water demand and energy consumption, conserve or restore natural resources, ensure wildlife habitat, improve air quality, and regulate climate; and

WHEREAS, landscape architects believe in and prioritize the fair treatment and meaningful involvement of all people regardless of race, national origin, education level, or income with regard to the development and implementation of public designs and plans; and

WHEREAS, [INSERT STATE'S] economy benefits from licensed landscape architects through the creation of inviting and safe spaces for the public, residents, and tourists alike, while simultaneously protecting the environment and associated ecological systems; and

WHEREAS, there are [INSERT NUMBER OF LICENSED LANDSCAPE ARCHITECTS IN STATE] licensed landscape architects in [INSERT STATE NAME]; and

WHEREAS, [INSERT UNIVERSITY(IES) NAME(S)], is/are (accredited landscape architecture programs), catalyzing students to be the next generation of leaders and innovators in landscape architecture in [INSERT STATE NAME]; NOW THEREFORE

BE IT RESOLVED, [INSERT STATE NAME], do hereby proclaim April [INSERT YEAR] as Landscape Architecture Month.

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