WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 198

(By Mr. McCourt, Mr. President, and )
Mr. Hubbard—original sponsor

PASSED MARCH 9, 1971

In Effect JULY 1, 1971—Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, relating to the practice of landscape architecture; providing for the licensing of persons engaging in the practice of landscape architecture; providing a legislative finding, a declaration of public policy and definitions; creating the West Virginia state board of landscape architects; relating to the qualifications, terms, oath and expenses of members of said board; relating to the officers
of said board; providing for meetings of said board; specifying the powers and duties of said board; relating to the receipt and disbursement of funds by said board; establishing qualifications for the issuance of a license or temporary permit for a landscape architect; providing exceptions; providing for applications for and the issuance of licenses and temporary permits, renewals thereof and fees in connection therewith; relating to the license and seal of a landscape architect; relating to partnerships and corporations and the practice of landscape architecture; relating to various exemptions from said article twenty-two; authorizing the board to suspend or revoke a license or temporary permit of a landscape architect and establishing the grounds therefor; authorizing said board to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings; authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic stay or suspension of certain orders of the board pending such hearings; relating to the costs for
such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the board; relating to issuance of new license after revocation of license; establishing criminal penalties; providing for injunctive relief; and providing a severability clause.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two, to read as follows:

**ARTICLE 22. LANDSCAPE ARCHITECTS.**

§30-22-1. Legislative findings and declaration of public policy.

1 The Legislature of the state of West Virginia hereby determines and finds that in the public interest persons should not hold themselves out as landscape architects in this state without the requisite experience and training and without adequate regulation and control. It is therefore declared to be the public policy of this state that the practice of landscape architecture affects the
general welfare and public interest of the state and its citizens; that persons without the necessary qualifications, training and education should not hold themselves out to the public as landscape architects; and that the evils of such unauthorized and unqualified representations may be best prevented and the interest of the public best served by regulating and controlling such representations as provided in this article.

§30-22-2. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) “Applicant” means any person making application for an original or renewal license or a temporary permit under the provisions of this article.

(2) “Licensee” or “landscape architect” means any person holding a license or a temporary permit issued under the provisions of this article and hence licensed to practice landscape architecture in the state of West Virginia under the provisions of this article.

(3) “Board” means the West Virginia state board of
landscape architects created in section four of this article.

(4) "Examination" means the examination in landscape architecture required by subdivision (e), subsection (a), section six of this article.

(5) "Landscape architecture" means the performance of professional services, including but not limited to consultations, research, planning, design or responsible supervision in connection with the development of land, where the dominant purpose of such professional services is the preservation, enhancement or determination of:

(i) Land uses;
(ii) Natural land features;
(iii) Ground cover and planting;
(iv) Naturalistic and aesthetic value;
(v) Settings and approaches to structures or other improvements;
(vi) Natural drainage; and
(vii) Consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight or other hazard.
Enr. Com. Sub. for S. B. No. 198] 6

(b) The practice of landscape architecture shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in the above definition of such term, but shall not include the design of structures or facilities with separate and self-contained purposes such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of final land plats for official approval or recording: Provided, That nothing contained herein shall preclude a landscape architect from performing any of the services described in the foregoing provisions of this subsection in connection with the settings, approaches or surroundings for buildings, structures or facilities.

§30-22-3. License to practice landscape architecture required.

On and after July one, one thousand nine hundred seventy-one, no person shall hold himself out to the public as a landscape architect unless and until he shall first obtain a license or temporary permit in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked.
§30-22-4. Creation of board of landscape architects; members, terms, meetings, officers, oath and expenses; general provisions.

1 (a) There is hereby created the West Virginia state board of landscape architects which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member must be a resident of West Virginia and must be the holder of a license under the provisions of this article, or, in the case of the members first appointed, must be eligible for such a license.

2 (b) The members of the board shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified, except for the original appointments. For the purpose of original appointments, one member shall be appointed for a term of three years and until his successor has been appointed and has qualified, one member shall be appointed for a term of two years and until his successor has been appointed and has qualified and one member shall be appointed for a term of one year and...
until his successor has been appointed and has qualified.

Members may be reappointed for any number of terms.

Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state.

Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect from its membership a chairman and secretary who shall serve at the will and pleasure of the board. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other busi-
ness as may come before it. Members shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which expenses shall be paid in accordance with the provisions of subsection (b), section six of this article.

§30-22-5. Powers and duties of board; funds of board.

(a) The board shall:

(1) Examine applicants and determine their eligibility for a license or temporary permit as a landscape architect;

(2) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license, to ascertain whether an applicant is qualified as to the theory and practice of landscape architecture, and determine the satisfactory passing score on such examination;

(3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules and regulations shall be promulgated in
accordance with the provisions of article three, chapter

twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses
and temporary permits of landscape architects in accord-
ance with the provisions of this article and, in accord-
ance with the administrative procedures hereinafter pro-
vided, may review, affirm, reverse, vacate or modify
its order with respect to any such denial, suspension or
revocation;

(5) Investigate alleged violations of the provisions of
this article, reasonable rules and regulations promulgated
hereunder and orders and final decisions of the board
and take appropriate disciplinary action against any
licensee for the violation thereof or institute appropriate
legal action for the enforcement of the provisions of this
article, reasonable rules and regulations promulgated
hereunder and orders and final decisions of the board or
take such disciplinary action and institute such legal
action;

(6) Obtain an office, secure such facilities and employ,
direct, discharge and define the duties of full or part-
time professional, clerical or other personnel to the extent necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Whenever it deems it appropriate, confer with the attorney general or his assistants in connection with all legal matters and questions; and

(9) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of landscape architects fund." The reimbursement of all reasonable and necessary expenses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from such
fund, and no part of the state’s general revenue fund shall be expended for this purpose.

§30-22-6. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license as a landscape architect, the applicant must:

1. Be at least twenty-one years of age;
2. Be of good moral character;
3. Not, within the next preceding twelve months, have had his application for a license or a certificate or for registration to engage in the practice of landscape architecture or as a landscape architect refused, suspended or revoked in any state of the United States;
4. Either (i) Be a holder of an undergraduate degree or graduate degree in landscape architecture from an accredited institution of higher learning, with adequate course study at such institution in landscape architecture, the adequacy of any such course study to be determined by the board; and when the degree held is an undergraduate degree, have had at least two years’ experience subsequent to receiving said degree in the practice of
landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect, and, when the degree held is a graduate degree, have had at least one year's experience subsequent to receiving said graduate degree in the practice of landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; or (ii) Have had at least ten years' experience in the practice of landscape architecture, of a grade and character to qualify him to assume responsibility for the work involved in the practice of landscape architecture, at least six years of which shall have been under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; and (5) Have passed the examination prescribed by the board, which examination shall cover the theory and practice of landscape architecture.
(b) The following persons shall be eligible for a license as a landscape architect without examination:

(1) Any person who was once licensed under the provisions of this article, who temporarily abandoned the practice of landscape architecture and did not renew his license, provided he satisfies the board that he remains qualified to engage in the practice of landscape architecture; and

(2) Any person who holds a license or certificate or is registered to engage in the practice of landscape architecture issued by or effected in any other state, the requirements for which license, certificate or registration are found by the board to be at least as great as those provided in this article.

(c) Any person meeting the qualifications set forth in subdivisions (1), (2) and (3), subsection (a) of this section, who submits evidence satisfactory to the board that for at least one year prior to the effective date of this article he regularly engaged in the practice of landscape architecture as a principal livelihood shall be entitled to be licensed under the provisions of
this article, without meeting the qualifications set forth in subdivisions (4) and (5), subsection (a) of this section, if he files such application with the board within six months from and after the effective date of this article.

(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board a license fee of forty dollars, which fee shall be returned to the applicant if he is denied a license.

§30-22-7. Issuance of license; renewal of license; renewal fee; duplicate license; display of license; seal.

1 Whenever the board finds that an applicant meets all of the requirements of this article for a license as a landscape architect, it shall forthwith issue to him such license; and otherwise the board shall deny the same. Licenses shall expire on June thirty of each year, but shall be renewable each year without examination upon appli-
7 cation for renewal on a form prescribed by and filed
8 with the board and payment to the board of an annual
9 renewal fee in such amount as may be prescribed by
10 the board not to exceed fifty dollars: Provided, That
11 if application for renewal is filed with the board after
12 June thirty of the year of expiration, an additional re-
13 newal fee of fifteen dollars must accompany such appli-
14 cation: Provided, however, That the board may deny an
15 application for renewal for any reason which would
16 justify the denial of an original application for a license.
17 A duplicate license may be obtained upon the payment
18 to the board of a fee of ten dollars. The board shall pre-
19 scribe the form of licenses and each license shall be con-
20 spicuously displayed by the licensee at his principal place
21 of practice.
22 Every person licensed under the provisions of this
23 article as a landscape architect shall have a seal, ap-
24 proved by the board, which shall contain the name of
25 the licensee and the words “Professional Landscape Archi-
26 tect, State of West Virginia” and such other words or
27 figures as the board may prescribe. All working drawings
and specifications, prepared by such landscape architect or
under the supervision of such landscape architect, shall
have such seal affixed thereto: Provided further, That
nothing contained in this article shall be construed to
permit the seal of a landscape architect to serve as a
substitute for the seal of an architect, an engineer or a
land surveyor whenever the seal of such architect, engi-
neer or land surveyor is required by law.

§30-22-8. Temporary permits.

(a) Upon proper application the board may issue,
without examination, a temporary permit as a landscape
architect, pending examination, to an applicant who meets
the qualifications of subdivisions (1), (2), (3) and (4),
subsection (a), section six of this article, which tempo-
rary permit shall expire thirty days after the board gives
written notice of the results of the examination held
next following the issuance of such temporary permit,
and such permit may not be renewed nor another thereof
issued to be same person.

(b) The fee for such temporary permit shall be fifteen
dollars.

1 Nothing contained in this article shall be deemed to
2 preclude a person licensed under the provisions of this
3 article from forming a partnership or corporation with per-
4 sons who are not so licensed if the name of the person so
5 licensed shall appear as the landscape architect on all
6 plans, drawings, specifications, reports or other instru-
7 ments of service rendered or submitted by such partner-
8 ship or corporation. In no case shall the other members
9 of such partnership or the others having an interest in or
10 connected with such corporation be designated or de-
11 scribed as landscape architects. A landscape architect
12 who forms a partnership or corporation with a person
13 or persons who are not landscape architects shall notify
14 the board in writing of such fact within thirty days
15 thereof, giving the board such information as may be re-
16 quired by the board. Upon dissolution of any such part-
17 nership or corporation, the landscape architect shall notify
18 the board thereof, in writing, within thirty days after
19 such dissolution.
§30-22-10. Exemptions from article.

1. Nothing contained in this article shall under any circumstances whatever be construed as in any way affecting the laws relating to the practice, licensing, certification or registration of architects, engineers, land surveyors and foresters.

2. An architect, engineer, land surveyor or forester licensed, certified or registered to practice his profession or occupation in West Virginia under the provisions of any law to regulate the practice of such profession or occupation is exempt from licensing under the provisions of this article, and nothing contained in this article shall under any circumstances whatever be construed as in any way precluding an architect, engineer or forester from performing any of the services included within the definition of the term landscape architecture in section two of this article when incidental to the performance of his normal practice as an architect, engineer or forester or as requiring any such person to be licensed under the provisions of this article.

Community, city or other municipal, urban and regional
21 planners and urban designers shall not be required to be
22 licensed under the provisions of this article.
23 Every agriculturist, horticulturist, landscape contractor,
24 nurseryman, gardener, landscape gardener, garden or
25 lawn caretaker, and grader or cultivator of land is exempt
26 from licensing under the provisions of this article.
27 Nothing contained in this article shall under any cir-
28 cumstances whatever be construed as in any way pre-
29 cluding any person from making any landscape plans,
30 drawings or specifications for any property owned, leased
31 or rented by him or, without compensation therefor, for
32 the property of any other person, or as requiring such
33 person to be licensed under the provisions of this article.
34 None of the persons referred to in this section shall,
35 however, use the title, "Landscape Architect," without
36 obtaining a license under the provisions of this article.

§30-22-11. Suspension or revocation of license or temporary
permit.

1 (a) The board may at any time upon its own motion,
2 and shall upon the verified written complaint of any per-
3 son filed with the board within two years from and after
the act or omission complained of, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or temporary permit issued under the provisions of this article.

(b) The board shall suspend for a period not exceeding one year or revoke any license or shall suspend or revoke any temporary permit when it finds the holder thereof has:

(1) Obtained a license or temporary permit by means of fraud or deceit or false or forged evidence;

(2) Been incompetent, grossly negligent, or guilty of other malpractice as defined by the board by reasonable rules and regulations or has been guilty of any fraud or deceit as defined by the board by reasonable rules and regulations;

(3) Affixed his seal to any plans, drawings, specifications, reports or other instruments of service which were not prepared by him or under his immediate and responsible supervision, or permitted his name to be used for the purpose of assisting any person to evade the provisions of this article; or
Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board.

(c) The board shall also suspend for a period not exceeding one year or revoke any license or shall suspend or revoke any temporary permit if it finds the existence of any ground which would justify the denial of an application for such license or temporary permit if application were then being made for it.


(a) Whenever the board shall deny an application for any original or renewal license or deny an application for a temporary permit or shall suspend or revoke any license or temporary permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby shall be returned to the board by the holder within
twenty days after receipt of said copy of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or temporary permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board
31 upon its own motion or for good cause shown by the
32 person demanding the hearing.
33 (d) All of the pertinent provisions of article five, chap-
34 ter twenty-nine-a of this code shall apply to and govern
35 the hearing and the administrative procedures in con-
36 nection with and following such hearing, with like effect
37 as if the provisions of said article five were set forth in
38 this subsection.
39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board shall have the power
42 and authority to issue subpoenas and subpoenas duces
43 tecum which shall be issued and served within the time,
44 for the fees and shall be enforced, as specified in sec-
45 tion one, article five of said chapter twenty-nine-a, and
46 all of the said section one provisions dealing with sub-
47 poenas and subpoenas duces tecum shall apply to sub-
48 poenas and subpoenas duces tecum issued for the pur-
49 pose of a hearing hereunder.
50 (f) At any such hearing the person who demanded the
51 same may represent himself or be represented by an
attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation. (g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any. (h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.


Any person adversely affected by a decision of the board
rendered after a hearing held in accordance with the provisions of section twelve of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.


After revocation of a license to engage in the practice of landscape architecture, the board may not issue a new license to the person whose license was revoked, without
an examination. Such person may file an application with
the board for an examination and new license, and the
board may, in its sole discretion, issue a new license to
such person.


Any person who violates any of the provisions of this
article, any of the reasonable rules and regulations
promulgated hereunder or any order or any final decision
of the board shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one hun-
dred and not more than five hundred dollars, or im-
prisoned in the county jail not more than one year, or
both fined and imprisoned.

§30-22-16. Actions to enjoin violations.

Whenever it appears to the board that any person has
been or is violating or is about to violate any provision
of this article, any reasonable rule and regulation promul-
gated hereunder or any order or final decision of the
board, the board may apply in the name of the state to
the circuit court of the county in which the violation or
violations or any part thereof has occurred, is occurring
or is about to occur, or the judge thereof in vacation, for
an injunction against such person and any other persons
who have been, are or are about to be, involved in any
practices, acts or omissions, so in violation, enjoining such
person or persons from any such violation or violations.
Such application may be made and prosecuted to conclu-
sion whether or not any such violation or violations have
resulted or shall result in prosecution or conviction under
the provisions of section fifteen of this article.
Upon application by the board, the circuit courts of
this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article, the
reasonable rules and regulations promulgated hereunder
and all orders and final decisions of the board. The court
may issue a temporary injunction in any case pending
a decision on the merits of any application filed.
The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by
29  law for appeals from circuit courts in other civil actions.
30  The board shall be represented in all such proceedings
31  by the attorney general or his assistants and in such
32  proceedings in the circuit court by the prosecuting at-
33  torneys of the several counties as well, all without addi-
34  tional compensation.

§30-22-17. Severability.

1  If any provision of this article or the application thereof
2  to any person or circumstance is held unconstitutional
3  or invalid, such unconstitutionality or invalidity shall not
4  affect other provisions or applications of the article, and to
5  this end the provisions of this article are declared to be
6  severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1971.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

[Signatures]

The within [approved] this the 1st day of April, 1971.

Governor