

**State of California  
Office of Administrative Law**

**In re:  
California Architects Board**

**Regulatory Action: Title 16  
California Code of Regulations**

**Adopt sections:  
Amend sections: 2620.5  
Repeal sections:**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL File No. 2013-0531-01S**

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**SUMMARY OF REGULATORY ACTION**

The California Architects Board (Board) proposed this regulatory action to amend title 16, California Code of Regulations, section 2620.5, which is the sole regulation that governs extension certificate programs for landscape architects. One way that an applicant for licensure as a landscape architect can fulfill educational requirements is by successful completion of an extension certificate program that is recognized and approved by the Board pursuant to the provisions of Section 2620.5. The provisions of Section 2620.5 were initially established by the Landscape Architects Technical Committee (LATC), a statutory committee under the purview of the Board, and adopted by the Board to mirror standards established by an organization called the Landscape Architectural Accreditation Board in a publication titled *Accreditation Standards and Procedures* (LAAB Standards). The LAAB Standards are used nationally for accrediting college and university degree programs in landscape architecture. The proposed amendments are intended to update Section 2620.5 to conform to updates made to the LAAB Standards published by the Landscape Architectural Accreditation Board on February 6, 2010 (2010 LAAB Standards).

**DECISION**

On May 31, 2013, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review in accordance with the Administrative Procedure Act (APA). On July 15, 2013, the OAL notified the Board of the disapproval of this regulatory action for failure to comply with the necessity standard of Government Code section 11349.1.

**DISCUSSION**

The adoption of regulations by the Board must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its

procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

### **NECESSITY**

OAL must review regulations for compliance with the necessity standard of Government Code section 11349.1, subdivision (a)(1). Government Code section 11349, subdivision (a), defines necessity as follows:

(a) “Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

To further explain the meaning of substantial evidence in the context of the necessity standard, subdivision (b) of section 10 of title 1 of the California Code of Regulations provides:

(b) In order to meet the “necessity” standard of Government Code section 11349.1, the record of the rulemaking proceeding shall include:

- (1) a statement of the specific purpose of each adoption, amendment, or repeal; and
- (2) information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An “expert” within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.

In order to provide the public with an opportunity to review and comment upon an agency’s perceived need for a regulation, the APA requires that the agency describe the need for the regulation in the initial statement of reasons. (Gov. Code, sec. 11346.2, subd. (b).) The initial

statement of reasons must include a statement of the specific purpose for each adoption, amendment, or repeal, and the rationale for the determination by the agency that each regulation is reasonably necessary to carry out the purpose for which it is proposed or, simply restated, “why” a regulation is needed and “how” this regulation fills that need. (Gov. Code, sec. 11346.2, subd. (b)(1).) The initial statement of reasons must be submitted to OAL with the initial notice of the proposed action and made available to the public during the public comment period, along with all the information upon which the proposal is based. (Gov. Code, sec. 11346.2, subd. (b) and sec. 11346.5, subs. (a)(16) and (b).) In this way the public is informed of the basis of the regulatory action and may comment knowledgeably.

The initial statement of reasons in this regulatory action did not describe the need for each amended regulatory provision that deviated from the updated 2010 LAAB Standards of which this regulatory action was based. (Any such deviations from the 2010 LAAB Standards will be referred to as amended regulatory provisions for purposes of this discussion.) The initial statement of reasons states that the provisions of section 2620.5 need to be updated to conform to the 2010 LAAB Standards; however, it needs to provide more than this. The problem, administrative requirement, or other condition or circumstance that each amended regulatory provision is intended to address must be identified. In addition, information must be included that explains why each amended regulatory provision is needed to carry out the described purpose of the regulatory provision.

The initial statement of reasons only provides background information on the development and administration of section 2620.5, including the genesis of section 2620.5 from earlier LAAB standards, followed by a brief statement that the earlier LAAB Standards had been updated and a list of the proposed amendments to section 2620.5 that contain only brief, conclusory statements describing what the proposed amendments are, not why they are needed. Additionally, the Board modified the proposed regulatory text in a 15-day notice of availability that took place from November 30, 2012 to January 9, 2013. But there is no necessity provided for these additional modifications anywhere in the rulemaking record. Furthermore, before this regulatory action is resubmitted to OAL, the Board must draft a statement of reasons to add to the rulemaking record to correct the lack of necessity in the initial statement of reasons. The Board may make additional modifications to the proposed regulatory text in another 15-day notice of availability, which the Board must approve, to clarify issues that become apparent while drafting this statement of reasons. The Board must provide necessity for all of the regulatory amendments to section 2620.5 upon resubmittal of this regulatory action to OAL.

Government Code section 11347.1 requires this statement of reasons, which will provide the necessity missing from the initial statement of reasons and from the rulemaking record, to be made available to the public for at least 15 days prior to the Board’s adoption, amendment or repeal of the regulations. Moreover, any comments made in relation to the supplemental statement of reasons or modifications to the text must be summarized and responded to in the final statement of reasons. (Gov. Code, secs. 11346.8, subd. (c) and 11347.1, subd. (d).)

The Board’s demonstration of the need for the amended regulatory provisions is basic to a complete understanding of the proposed regulations. Without an adequate showing of necessity for each amended regulatory provision, OAL cannot be certain of what effect the Board intended

regarding the amended regulatory provisions. OAL must therefore reserve the right upon resubmittal of this regulatory action to conduct a review of these regulations for compliance with all of the substantive standards of Government Code section 11349.1 until such time as an adequate statement of reasons is submitted with the rulemaking record.

**CONCLUSION**

For the reason set forth above, OAL has disapproved this regulatory action. If you have any questions, please contact me at (916) 323-6809.

Date: July 17, 2013



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