

**Regulatory Board Review**

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**Board of Architects**

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**Licensure of the Practice of Architecture  
Is Needed to Protect Public Interest**

**The Board Satisfactorily Complies With  
Most of the General Provisions of  
Chapter 30**



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John Sylvia  
Director

November 16, 2003

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Review of the Board of Architects, which will be presented to the Joint Committee on Government Operations on Sunday, November 16, 2003. The issues covered herein are "Licensure of the Practice of Architecture is Needed to Protect Public Interest;" and "The Board Satisfactorily Complies with Most of the General Provisions of Chapter 30."

We transmitted a draft copy of the report to the Board of Architects on October 30, 2003. The Board opted not to have an exit conference. We received the agency response on November 5, 2003.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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The Board of Architects was created by the Legislature to protect the public. The Board consists of seven members; five architects and two lay members. The Legislative Auditor has determined that the Board of Architects should be continued and that the Board does comply with most of the general provisions in Chapter 30 of the West Virginia Code.

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*The licensing of architects is necessary for protecting the citizens of West Virginia.*

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## **Issue 1:      Licensure of the Practice of Architecture Is Needed to Protect Public Interest**

Architects are responsible for functions which are potentially harmful to the public if competency is not regulated. Architects design structures for human occupancy, and the safety and stability of the structure are important to protect the citizens of West Virginia. A sizeable percentage of architects are self-employed allowing for potential harm if the profession were unregulated. Currently, all 50 states have a licensing board which regulates the practice of architecture. Therefore, it is the opinion of the Legislative Auditor that it is necessary to continue licensing this profession to provide for the protection of public health and safety.

## **Issue 2:      The Board Satisfactorily Complies With Most of the General Provisions of Chapter 30**

The Legislative Auditor finds that the Board of Architects has complied with the following Chapter 30 General Provisions: meets annually; maintains a record of proceedings; has a sufficient fee structure set out in rule to carry out its duties; submits annual reports to the Governor and Legislature; is listed in the state government section of the Charleston area telephone book; maintains financial sufficiency; and attended the State Auditor's orientation session.

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*The Board resolves all complaint cases within an average of 2.5 months.*

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The Board requires licensees to complete continuing education, annually conducts random audits to confirm compliance, and has revoked licenses of those who were found to be out of compliance after providing those licensees an opportunity to complete the required continuing education. Complaints are responded to and due process is provided to licensees against whom a complaint has been filed. The Board does maintain a register and roster. However, the register does not contain the appropriate information as required by code. The Board should include more information on its web site.





# **Review Objective, Scope and Methodology**

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This Regulatory Board Evaluation is required and authorized by West Virginia Sunset Law Chapter 4, Article 10 of the West Virginia Code, as amended.

## **Objective**

The objective of this report is to monitor the compliance of the Board with Chapter 30 regulations.

## **Scope**

The scope of this review covers the period from June 2001 to October 2003.

## **Methodology**

The methodology for this report included reviewing relevant statutes within the West Virginia Code, information from previous reports, and information from the Secretary of State's Office. Every aspect of this review complied with Generally Accepted Auditing Standards (GAGAS).



# Issue 1

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## Licensure of the Practice of Architecture is Needed to Protect Public Interest

*The licensing of architects is necessary for protecting the citizens of West Virginia.*

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This report is a *Regulatory Board Evaluation* which requires by law a determination of whether or not licensure is necessary for public protection. In determining if there is a need for licensure of architects, a primary consideration is whether the unregulated practice of the profession would clearly endanger the safety of the public. **The Legislative Auditor finds that the licensing of architects is necessary for protecting the citizens of West Virginia.**

The “practice of architecture” is defined in the WV Code (§30-12-2) as:

*... rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and surrounding such buildings, which have as their principal purpose human occupancy of habitation; the services referred to include planning, providing preliminary studies, designs, drawings, specifications and other technical submissions and administration of construction contracts.*

A member of the Board states:

*It [The Board] has the responsibility to ensure that those who practice architecture are qualified, in order to safeguard the people of this State.*

According to a list in the “Handbook for Building Officials” developed by the West Virginia Board of Architects and the West Virginia State Board of Registration for Professional Engineers, architects have general responsibility for several areas. An example of those areas are:

- Site layout including zoning requirements, building layout, and parking
- Aesthetics and overall design
- Building classification including type of construction and occupancy
- Building circulation and exiting
- Life safety considerations, including fire walls, alarms and sprinkler requirements

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- Interior space planning
  - Interior and exterior finish materials
  - Environmental impacts
  - Criteria for the physically handicapped
  - Overall project coordination

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*Approximately 30% of architects are self-employed. Thus, many licensees work without the supervision of an employer.*

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The Board of Architects has 1,071 licensees. According to the *Occupational Outlook Handbook*, as published by the United States Department of Labor, about 30% of architects are self-employed. Thus, licensees would work directly with the public without the supervision of an employer, creating potential harm against the public if competency of architects is not ensured. Examples of harm that could occur include: buildings not built to code, fire safety standards not met, poor structural integrity, and disability access not properly constructed. This would jeopardize public safety and result in significant monetary damages.

## **Conclusion**

Architects are responsible for functions which are potentially harmful to the public if competency is not regulated. Architects design structures for human occupancy, and the safety and stability of the structure are important to protect the citizens of West Virginia. A sizeable percentage of architects are self-employed allowing for potential for harm. Currently, all 50 states have a licensing board that regulates the practice of architecture. **Therefore, it is the opinion of the Legislative Auditor that it is necessary to continue licensing this profession to protect the public interest and safety.**

## **Recommendation 1**

*The Legislative Auditor recommends that the Legislature continue to require architects be licensed by the State of West Virginia.*

# Issue 2

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## **The Board Satisfactorily Complies with Most of the General Provisions of Chapter 30**

The Board of Architects has satisfactorily complied with most applicable state laws and rules. These laws and rules, primarily found within the Board's own article of Code and in the general provisions of Chapter 30, are important in the effective operation of a licensing board. The Board has complied with the following:

- An official seal has been adopted by the Board;
- The Board is listed in the state government section of the Charleston area telephone book;
- The Board submits annual reports to the Governor and the Legislature;
- The Board maintains a record of its proceedings;
- The Board maintains a roster;
- The Board meets at least once annually;
- The Board is financially self-sufficient;
- A Board representative attended the orientation session provided by the State Auditor's Office.

## **The Board Requires Continuing Education**

The Board of Architects requires licensees to complete 12 hours of continuing education annually. *West Virginia Code* §30-1-7a requires the Board to establish rules for continuing education. The *Code of State Rules* §2-1-8 specifies the rules adopted by the Board concerning continuing education requirements for licensee renewals. Annually, 5% of licensees are audited to determine whether continuing education requirements are being met. Those randomly selected licensees are required to submit detailed information about their continuing education hours. Submission of additional information about the continuing education may be required. Registrants whose continuing education is determined unacceptable by the Board have 180 days to complete the required hours.

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*The Board requires licensees to complete 12 hours of education annually.*

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In 2002, 45 architects were audited. Of the 45, six architects were placed on probation for failing to meet the continuing education requirements. Another six architects did not respond at all to the request for the continuing education audit and were sent letters of revocation.

### The Board Provides for Due Process

The Board resolves all complaint cases within an average of 2.5 months.

The Board logs all complaints received. The Board resolves all complaint cases within an average of approximately 2.5 months. Table 1 shows the number of complaints logged for the past three years. Currently, the Board received no complaints in FY 2003.

Table 1 Complaints Filed FY 2001-2003					
Fiscal Year	# of Complaints	Fines	Suspensions	Revocations	Cease and Desist Orders
2001	5	0	1	0	2
2002	4	0	0	1	2
2003	0	0	0	0	0

*Source: Board of Architects Complaint Log as of FY 2003*

Due process is provided by the Board as required in §30-1-5(b) for licensees against whom a complaint has been filed. A complaint acknowledgment is sent to the complainant after the Board conducts an initial review and preliminary review. If the Board determines there are sufficient grounds to support Board action, then the licensee against whom the allegations have been made is sent a copy of the complaint, supporting documentation and a notice of alleged violation. The licensee is informed that he/she has thirty days to submit a written response. After receiving a notice of complaint from the Board, the licensee may request an informal conference before the Board. Complainants and licensees may make a written request for the issuance of subpoenas or subpoenas duces tecum for the production of documentary evidence to the Board.

### Open Meeting Notices Filed in All but One Case

The Board is required by Legislative Rule to meet twice annually and has done so as shown in Table 2.

<b>Table 2</b>			
<b>Open Meeting Notices (2001 - 2003)</b>			
	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Notices Filed Timely</b>	1	4	3
<b>Notices Filed Late</b>	0	0	0
<b>Notices Not Filed</b>	2	0	0
<i>Source: Secretary of State's Office</i>			

The Secretary of State's Office had no record of any notices for meetings that took place on July 20, 2001 and December 14, 2001. All other meeting notices since then have been filed timely.

### **The Board is Financially Self-Sufficient**

*The Board is financially self-sufficient although expenses have exceeded revenues for the past 3 years.*

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The Board's licensing fees and administrative fees imposed against its licensees are remitted to the Board's special revenue fund, and although no fines have been imposed, the Board is aware that fines are remitted to the State's general fund in accordance with West Virginia Code §30-1-8. As shown in Table 3, the Board's expenses exceed their revenues for the three years examined, although the Board continues to be financially self-sufficient.

<b>Table 3</b>			
<b>Board Revenues and Expenses (FY 2001-2003)</b>			
	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
<b>Revenues</b>	\$123,825	\$119,150	\$124,800
<b>Expenditures</b>	\$133,819	\$140,000	\$141,000
<b>EOY Cash Balance</b>	\$131,068	\$106,403	\$118,257
<i>Source: Board of Architects Financial Records for FY 2001-2003</i>			

### **The Board Does not Maintain the Register Correctly**

A Board register and roster was requested by the Legislative Auditor. Both were provided by the Board. The Board's register contained names of all licensees since 1923, but it did not give the date of application, name, age,

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*The Board does not properly maintain a register.*

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education and other qualifications, place of residence, examination required, license granted or denied, suspensions, etc., as required by WVC §30-1-12(a). The Legislative Auditor recognizes that the Board may not be able to retrieve this information dated back to 1923, but does believe the Board could do so for the more recent years.

### **The Board's Web Site Does Not Contain All of the Legislative Auditor's Recommended Information**

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*The Board maintains a website, but it does not include all the information recommended by the Legislative Auditor.*

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In a June 2003 audit on the Board of Landscape Architects, the Legislative Auditor recommended that all Chapter 30 licensing boards should have a web site by January 2005. The Board of Architects does maintain a web site at [www.wvbrdarch.org](http://www.wvbrdarch.org), however it does not contain all information recommended by the Legislative Auditor. The site includes a list of members; copies of the annual report, meeting minutes, and the newsletter; information on legislative rules, fees, registration, and continuing education; a searchable roster; downloadable complaint forms; and a link to the State of West Virginia home page. However, the Board of Architects web site doesn't contain information that the Legislative Auditor has recommended that should be included, such as:

- Where a licensee received the required education;
- When a licensee completed the required education;
- When a licensee was licensed;
- The number of complaints, if any, filed against a licensee;
- The number of substantiated complaints, if any, against a licensee;

The Legislative Auditor commends the Board of Architects for maintaining a web site, but recommends the inclusion of the aforementioned items.

### **Conclusion**

The Board of Architects has satisfactorily complied with most of the general provisions of Chapter 30 of the West Virginia Code. The Board is accessible to the public through its telephone listing and its web site. The Board meets regularly and maintains adequate records of its meetings. In addition, the Board requires and verifies continuing education of its licensees, responds to complaints in a timely manner, provides due process to licensees against whom a complaint has been filed, and maintains financial self-sufficiency. The Board maintains a web site, but it does not include information that the Legislative



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Auditor has recommended to the Legislature for all licensing boards to include on their web sites by January 2005. In addition, the Board should fully comply with the register requirements as specified by §30-1-12a..

### **Recommendations**

2. *The Board of Architects should fully comply statutorily with the register requirements for years in which data are available.*

3. *The Legislative Auditor recommends that the Legislature consider amending WVC §30-1-12(c) to require all Chapter 30 licensing boards to have a website in operation by January 1, 2005. Such website should consist of the required information listed in this issue.*



# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia  
Director

October 30, 2003

William E. Yoke, Jr., President  
Board of Architects  
PO Box 9125  
Huntington, WV 25704-0125

Dear President Yoke:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Architects. This report is scheduled to be presented during the November 16 - 18, 2003 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report between October 31, 2003 and November 5, 2003, please notify us. We need your written response by noon on November 5, 2003, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, November 13, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response



## WEST VIRGINIA BOARD OF ARCHITECTS

2699 Park Avenue, Suite 220  
P.O. Box 9125  
HUNTINGTON, WEST VIRGINIA 25704-0125

PHONE: (304) 528-5825  
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November 5, 2003

Mr. John Sylvia, Director  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Blvd., East  
Charleston WV 25305-0610

RECEIVED  
NOV 05 2003

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

RE: West Virginia Board of Architects  
Performance Evaluation written response

Dear Mr. Sylvia:

In response to your report to be presented to the Joint Committee on Government Operations, the Board of Architects would like to have the following responses to recommendations 2 & 3 be considered for inclusion in your report.

**Recommendation #2:** *The Board of Architects should fully comply statutorily with the register requirements for years in which data are available.*

The registration book maintained by the Board of Architects currently provides the name of each registrant, the address for correspondence, the initial date of registration, and the method by which the registration occurred (reciprocity through the National Council of Architectural Registration Boards, state to state reciprocity, or through direct examination in West Virginia). Additional information is maintained by the board in each registrants file (computerized database dating back to 1995), including age and birth date, education records, and disciplinary actions as mentioned in your report. However, the board feels that making this information immediately available to the public through posting in the registration book could be interpreted as a violation of the Freedom of Information Act, specifically for use in marketing or identity theft purposes. All of this information is provided to the public and other state registration boards routinely upon request.

The board is ultimately willing to comply, but requests that this recommendation be reconsidered in light of FOIA regulations and the above concerns.

**Recommendation #3:** *The Legislative Auditor recommends that the Legislature consider amending WVC 30-1-12(c) to require that all Chapter 30 licensing boards to have a website in operation by January 1, 2005. Such website should consist of the required information listed in this issue.*

William E. Yoke, Jr., President  
Clarksburg

Gregory A. Williamson,  
Secretary/Member  
Charleston

E. Ted Boggess, Member  
Princeton

Jeffrey Kreps, Member  
Charleston

Lloyd W. Miller, Jr., Member  
Charleston

Gary Markham, Lay Member  
Charleston

Jan Fox, Lay Member  
Charleston

Lexa C. Lewis  
Board Administrator

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Mr. John Sylvia  
November 5, 2003

Page 2

The web site maintained by the Board of Architects currently provides the name of each registrant, the address, the firm name by which the registrant is employed; the registrants license number; and the status of registration. The report prepared by the Legislative Auditor has recommended that the following additional information be posted on the web site:

- *Where a licensee received the required education*
- *When a licensee completed the required education*
- *When a licensee was licensed*
- *The number of complaints, if any, filed against a licensee*
- *The number of substantiated complaints, if any, filed against a licensee*

The Board of Architects maintains the above information in each registrants file, and makes this information available to the public and other state registration boards routinely upon request. However, the board does not view these items as essential to the purpose of the web site roster for the following reasons:

1. Making this information immediately available to the public though posting on the web site roster could be interpreted as a violation of the Freedom of Information Act. This information could be used for marketing or identity theft purposes.
2. The web site roster lists all active status architects in West Virginia as determined by the qualifications established by legislation. One of the primary tasks of the board is to verify compliance with education and training requirements. Only architects that have met West Virginias rigorous standards will be licensed and posted on the web site. With respect to complaints, if a registrant has had a license suspended, the registrant will be removed from the web site roster for the duration of the suspension. Therefore, only registrants in good standing with the board will be included in the web site roster.

The board is ultimately willing to comply, but requests that this recommendation be reconsidered in light of FOIA regulations and the above concerns.

If you feel that these comments are appropriate, please include them in your report. Thank you for you assistance.

Sincerely,

WEST VIRGINIA STATE BOARD OF ARCHITECTS



Gregory A. Williamson AIA  
President, WV Board of Architects

GAW/