

AICP Guide to Issues to Address When Preparing Legislation That Regulates Planners

Prepared by the AICP Licensing Committee

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The American Institute of Certified Planners has prepared this guide to assist any APA chapter or section interested in considering state legislation to regulate the practice of the art and science of planning. It does not attempt to weigh the pros and cons of such regulation, whether it be licensing, registration, or certification of professional planners. Instead it aims to identify the many often complex issues that should be examined when first raising the issue of regulation and second when drafting actual legislation.

This document is intended for the internal use of APA Chapters and members. It is not intended to be distributed to the public, elected or appointed officials or their staffs, or any other group or individual outside of the membership of the American Planning Association.

Legislation to regulate professional planners will almost certainly result from a political process that also involves many professions beyond planners — including architects, landscape architects, engineers, and surveyors — as well as members of the state legislature and their staff, the governor and her staff, existing professional boards and commissions, municipal leagues, and other interested citizens. Professional planners should be aware that once the regulation issue is raised, they may have only a marginal influence on the final statute because other professions may be more politically influential. But if planners comply with the planning adage, “The better informed decision makers are, then presumably the better their decisions will be,” they will probably be able to exercise a greater influence on this political process that shapes the final legislation. By providing a framework for drafting legislation to regulate the practice of planning, this guide should help enable planners to exercise a greater influence on the contents of any bill to regulate planners that makes it to the floor of a state legislature.

Deciding between licensing, registration, and certification

Before you even begin to draft legislation, you must decide whether the public interest and the interests of the planning profession are best served by licensing, registering, or certifying professionals to practice planning.

- **Licensing** is the statutory control of the right of individuals to engage in the practice of a profession or occupation. New Jersey is the only state that licenses professional planners.
- **Registration** is the statutory control over the use of a title associated with a professional activity. Michigan is the only state to require registration to use of the title “community planner.” As practiced by the State of Michigan, this is a more narrow regulation of planners than the licensing the New Jersey imposes.
- **Certification** refers to a nongovernmental procedure by which an organization recognizes individuals as having met certain criteria or possessing a certain body of knowledge associated with a profession. The American Institute of Certified Planners currently provides this function for the planning profession.

It is the position of the American Institute of Certified Planners (AICP) and its parent organization, the American Planning Association (APA), that meeting the educational, experience, and knowledge requirements to become a member of AICP, and practicing planning within the ethical standards of AICP, achieves any public interest in regulating professional planners.

Determining the purpose of the legislation

It is blatantly illegal to adopt a licensing or registration statute to restrict competition. Seeking to limit the number of persons practicing a profession in a state and thereby raise salaries to those who are licensed, fails to serve a legitimate public purpose. Safeguarding life, health, and property, and promoting the public welfare — as enumerated in the New Jersey licensing statute — are legitimate public purposes that licensing or registration can serve. Those who seek licensing or registration of planners will enhance prospects for passage of their legislation if they clearly demonstrate how such restrictions on the practice of planning actually achieve a legitimate public purpose.

Licensing laws were originally enacted to protect the public from direct harm at the hands of unqualified practitioners. Simple direct language may be best. It could be said, for example, that the purpose of the statute is to establish minimum standards of knowledge and skill for the professional practice of planning — a position that is consistent with the purposes of the AICP exam.

Advocates of licensing or registration should be aware that critics of state licensing laws have often argued that the primary purpose of licensing or registration is to promote the interests of those being licensed. Advocates should be prepared to respond effectively to that argument.

Defining the “practice of planning”

Devising a definition of “planning” that encompasses the full scope of what professional planners do has long evaded the best efforts of the profession. As we enter a new century, the scope of planning practice has expanded far beyond what anybody would have imagined 50 years ago. This is reflected by the job analysis AICP periodically conducts. Based on this research, it is safe to say that there are likely to be planning practitioners whose activities are not going to be encompassed clearly or by name within any state-defined realm of planning, including, but not limited to, planners working in such functional areas as economic development, employment, public finance, or social or human services. Anybody developing licensing or registration legislation needs to take into account how the professional status of such planners would be addressed. Such legislation should not inhibit their ability to practice or use the word “planner” in their title.

The first step is to define what planning practices are to be regulated. Once you’ve agreed on a definition of this scope of planning, you need to put that definition in clear and succinct language. Again, it would be prudent to base the definition on research on what planners in the field are actually doing, not what someone contends they are doing. It is important to remember that planning is not an academic pursuit, but actually an applied system of skills and knowledge used to solve the challenging issues of community growth and change.

You would be wise to define planning as narrowly as possible, not just for the sake of clarity, but also to minimize potential conflict or overlap with the descriptions of other regulated professions. In fact, the legislation that governs the licensing or registration of planners does *not* have to comprehensively define the “practice of planning.” Such legislation need only define the areas of planning practice that the drafters wish to regulate. Both the Michigan and New Jersey statutes define “planning” much more narrowly than its actual practice:

- The Michigan registration statute offers a narrow definition of planning when it states “a community planner may engage in the preparation of the comprehensive community plan, including the preparation of planning studies which assist in the preparation or the implementation of the comprehensive community plan.” This type of definition substantially limits the scope of the statute

to cover the work involved in preparing and implementing a comprehensive community plan. It would not require registration as a planner for someone who does health planning, social planning, economic planning, or any other planning work beyond the scope of preparing and implementing a comprehensive community plan.

- The New Jersey licensing statute offers a broader definition of the “practice of professional planning,” which it defines as the “administration, advising, consultation or performance of professional work in the development of master plans ... and other professional planning services related thereto intended primarily to guide governmental policy for the assurance of the orderly and coordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof. The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey.” The New Jersey statute specifies that licensed professional engineers, land surveyors and registered architects can perform any of the planning functions specified in the statute as long as they do “not hold themselves out as professional planners or planners.”

The licensing or registration definitions a legislature imposes on professions related to planning and the scope of their professional practice can also have an impact on professional planners. For example, if a state licensing statute defines the practice of landscape architecture to include the development of land-use plans, then any person engaged in that activity would be practicing landscape architecture. To do so without a license would be illegal. This situation illustrates why many of the battles in state licensing are fought at the boundaries. Whether it is architects versus engineers, lawyers versus accountants, or barbers versus beauticians, there is almost always tension at the boundaries where the activities of similar or related professions or occupations overlap. The problem can be approached by consulting with the affected professions on desirable language or providing exemptions where clear overlap in activities occurs. Where cooperation between professions does not occur in developing statutory language, political muscle tends to produce the winners and losers.

Standards for receiving a license or registration

The elements of most state professional licensing statutes are quite similar to the criteria for achieving AICP membership: minimum education and experience standards, plus demonstrating a minimum set of knowledge and judgment as measured by a written examination administered by a state agency or board or by AICP. Of course, specific standards for each element vary from state to state.

Experience Required to be eligible to take the exam.

This aspect of regulation consists of two elements:

- First, some minimum period of professional planning experience must be set.
- Second, the type of professional planning experience must be determined.

There is no magic formula for determining these two criteria. The key is to be rational and to avoid creating any Catch 22s — namely requiring so many years of professional experience as a planner to take the licensing or registration exam, but not allowing the applicant to acquire that experience in the state. AICP’s functional definition of “professional planning experience” is a good place to start when drafting state legislation. However, actual statutory language should probably be more succinct and more specific. The AICP definition is reproduced below.

AICP Definition of Professional Planning Experience

Intent. The following criteria define professional planning experience in the work of an individual applicant. While the criteria are more likely to be met in an agency, institution, or firm engaged in comprehensive planning, instruction, or research, this is not a prerequisite.

Applicants offering experience in more narrowly focused places of work should take particular care in showing how that experience meets the four criteria.

Professional Planning Experience. "Professional planning experience," whether acquired through practice, teaching or research, must address all four of the following criteria:

A. Influencing public decision making in the public interest. Recommending specific actions or choices to elected/appointed officials, private sector representatives, or others regarding public decisions concerned with social, economic, or physical change in the public interest.

B. Employing an appropriately comprehensive point of view. Appropriate comprehensiveness requires: (1) looking at the consequences (e.g., physical/environmental, social, economic/ financial, governmental) of making a proposed decision; (2) conforming a proposed decision to the larger context in which it will occur; and (3) treating multiple policies, actions, or systems simultaneously when interlinkages are too great to treat separately. It does not require looking at everything at once if the above three criteria are met with a proposal, plan, or program of narrower scope.

C. Applying a planning process appropriate to the situation. This means a process which is appropriate to its place and situation in: (1) the number and order of its steps — e.g., problem/opportunity definition, goal setting, generating alternate strategies, strategy choice, implementation, evaluation; (2) its orientation to the future, to value change, and to resource constraints; (3) its quality of research and analysis; and (4) its format of policy, program, or plan proposal.

D. Involving a professional level of authority, responsibility, and resourcefulness. This means initiative, judgment, substantial involvement, and personal accountability for defining and preparing significant substantive elements of planning activities.

To qualify as professional planning experience, the work must meet all of the above criteria.

Full Time and Part Time Experience. Persons engaged in part-time professional planning experience may prorate that experience into a full time equivalent. Persons working full time, but devoting a portion of their time to professional planning and a portion of their time to another field, may prorate their professional planning experience into a full time equivalent.

Unacceptable as Professional Planning Experience

A. Work in related fields, unless it constitutes a minor element of the applicant's planning experience. The following illustrates types of work in related fields sometimes performed by planners, but more often by other professionals:

Subdivision design

Large scale housing or site design work

Traffic engineers or highway design

Land surveying or mapping

Community organization

Social work

B. Experience in related professions (e.g., law, architecture, landscape architecture, engineering).

C. Market research for analysis, and other types of physical and social science research normally performed by other professions or academic disciplines.

D. Work at a pre-professional level. Although there is often a fine line between professional experience and pre-professional experience, the latter generally involves less personal responsibility and less substantive technical accomplishments along the lines of the above four criteria that define professional planning experience.

The minimum length of qualified professional experience could be fixed or vary according to the candidate's level of education. The nature of the experience is generally defined as some period in training doing whatever the statute defines as professional planning, often the same kind of work contemplated under the language as "professional practice." The New Jersey licensing law and the Michigan registration statute both require a period of professional experience before you can take the written examination with a sliding scale in which the number of years of qualifying experience is inversely proportional to the amount of education. Their requirements are similar to the AICP sliding scale where you need two years of qualified professional experience if you have an accredited graduate degree in planning, three years with an accredited bachelor's degree in planning, four years for any other graduate or undergraduate college degree, and five years experience if you do not have a college degree.

Education. Given the variety of ways in which planning education is delivered there are many choices to consider. There are professional degrees offered at the bachelor's and graduate levels. The Planning Accreditation Board, an organization supported in part by AICP, accredits many planning degree programs. Other professional degrees are not accredited. At the undergraduate level, there are planning majors in addition to planning degrees. Common in undergraduate geography or urban studies degree programs is a planning "emphasis" or "concentration." The choice of a minimum educational attainment can be complicated and politicized in those states where there are institutions offering unaccredited degrees, majors, or "concentrations" in competition with accredited professional degrees.

Passage of Written Exam. The licensing laws of many professions usually require passage of a two-part exam. The first part tests nationally accepted knowledge and skills as the minimum standard for those who would practice that profession. This exam usually covers history, theory, and techniques of the field — just like the AICP exam.

The second part is unique to each state. It tests the applicant's knowledge of the relevant laws and practices specific to that state. For example, candidates for the bar throughout the country must pass the same "multi-state" exam, but also must pass another exam that covers state law and is produced for that specific state. It would be quite reasonable to draft a licensing or registration statute that uses the current AICP exam as the multi-state test while a separate test is developed for the individual state to cover the application of planning knowledge within the subject state.

Virtually all state licensing laws provide for those who do fail to pass the qualifying exam to retake it at a later date. Neither New Jersey nor Michigan limit the number of times an applicant may try. This is consistent with a broadly held view that qualified applicants should be allowed to sit for as many exams as they wish. Note that New Jersey requires that once someone applies for a planning license, he has 10 years to complete the process or he must start over again. The statute you prepare should specify the intervals at which the exam will be given. It is customary to give the exam at least once a year.

It is important to keep in mind that developing, updating, and administering such an exam for a state is an expensive proposition, especially in states with relatively few planners. Fees generated by a relatively small number of candidates will not begin to cover the cost of developing and administering the exam. For example, the State of Illinois has more than 60,000 attorneys, but fewer than 3,000 planners. The economies of scale are present for covering the cost of licensing attorneys, but not for licensing or registering planners. If a state has relatively few planners and the nature of planning practice in that state does not require skills or

practices not covered by the multi-state exam, it would be quite reasonable to require candidates to pass only a multi-state exam, specifically the AICP exam, rather than both a multi-state and state-specific test.

Residency requirements and requiring references

Nobody has been able to demonstrate how a residency requirement to be licensed or registered in a profession advances any legitimate government interest. However, you may run into individuals or groups who want to require residency in the state before you can apply for a license or register as a planner — or who may seek to require residency in the state to retain your registration or license.

Requiring residency to be licensed or registered in that state is nothing more than an attempt to protect the income potential of local license holders by excluding consultants with a multi-state practice from competing for contracts and by excluding out-of-state planners from competing for planning jobs. They are a disservice to the public by denying to those who purchase planning services the opportunity to select a planner from the widest possible pool of qualified professionals.

A residency requirement would be especially troublesome in multi-state metropolitan areas. Any person who meets the objective criteria for a license and demonstrates sufficient knowledge and skill by passing the required exam should be able to obtain a planning license. It may be reasonable to require that all practitioners pass the in-state portion of the exam, but no legitimate government interest is served by requiring them to take the multi-state portion again if they passed it in a different state, or to require them to live in the state in which they are licensed or registered as a professional planner.

Without explaining how to demonstrate “good moral character,” both states that regulate planners require that an applicant be a person “of good moral character.” There are a lot of pitfalls to avoid when trying to define “good moral character.” For example, while the absence of any felony convictions may be a tempting criterion, there is no objective evidence available to prove this is an indicator of “good moral character.” There’s no rational basis to exclude from the practice of planning somebody who has been convicted of, say, a violent crime or drug possession, served her time, and been rehabilitated. Both are unrelated to determining the moral character for what a planner does. It would be more rational to exclude somebody convicted of white collar crimes involving fraud or a violation of fiduciary duties — since such behavior runs so counter to ethical standards for planners.

It is tempting to require letters of reference to establish an applicant’s “good moral character.” If that is done, it is important that the letters be allowed from people not related to the applicant who are familiar with the applicant and his work. A statute should not limit references to licensed or registered planners in the state because such a requirement has a good likelihood of applicants who do not have connections to the planners in the state and can inadvertently become a tool that excludes members of minority groups from the practice of planning.

Maintaining a license or registered status

Some states require professionals who receive a license to practice their profession to demonstrate, in some manner, that they are keeping current in their field and continuing to educate themselves in their profession. A few states require licensees to retake the entry examination to retain their licenses — say, every 10 years or so.

It’s more common for a state licensing scheme — although by no means universal — to require licensed professionals to participate in a structured continuing education program in order to retain their licenses. This sort of scheme assumes that continuing education programs uniformly educate all of their attendees. There is no evidence that mandating participation in continuing education programs achieve this assumption nor that participants in such programs are more competent at their profession than professionals who do not participate in formal continuing education programs.

Note that mandatory continuing education programs impose additional administrative and costs burdens on the licensing or registration system. For them to work, it is crucial that sufficient affordable and accessible opportunities for continuing education be available. Second, the state licensing board must develop a process to review each continuing education offering to assure quality. Critics of mandatory continuing education requirements note that while such systems get people to attend continuing education functions, there is no guarantee that attendees actually learn anything at these courses. They rarely require the participants to pass an exam or submit evidence of what they have learned.

Treatment of regulated professionals in related fields

If a member of a licensed profession related to planning wishes to engage in planning practices, she should have to obtain a license as a planner and meet the same criteria as an individual trained as a planner. There's no rational reason for members of related professions to be "grandfathered" in as professional planners. There may be political reasons, but not any reasons that achieve a legitimate public purpose. Be aware that the political muscle of these related professions may be a lot stronger than planners — which can result in them having a substantial influence on any legislation that imposes licensing or registration of planners.

The New Jersey licensing statute allows members of related licensed professions to engage in planning activities as long as they do not hold themselves out as planners — exactly the sort of exception these politically influential groups can obtain that waters down licensing or registration for planners. If a person licensed as a professional engineer, land surveyor, registered architect, or certified landscape architect in New Jersey wishes to also be licensed as professional planner, he has to take only the state-specific examination and not the multi-state exam. One is hard pressed to find any legitimate state interest in exempting these individuals from the multi-state exam or the education requirements for a planning license.

Such exemptions give a stamp of the legitimacy of a state license to persons who may have little knowledge of planning as defined by APA and AICP. These exemptions tilt the perceptions, and ultimately the reality, of the planning profession to being only one among a collection of physical design professions.

Conflicts among the professions arising in this context have often been resolved by political power. Which professions have the most friends in the state legislature? Publicly employed planners and planning consultants are rarely among the most generous contributors to political campaigns. Members of the engineering, architecture, and legal professions tend to be better paid than planners, have much greater numbers, and be more able and willing to contribute significant sums to political coffers — which, like it or not, spells political influence.

This potential for political conflict with allied professions makes a strong argument for supporting an established certification program like AICP rather than licensing or registration. Better to offer a widely accepted alternative than have planning practice constrained or diluted due to politics. Certification provides a way to assert the legitimacy of planners at the national level. As more planners are certified, the strength of the AICP credential grows.

Reciprocity

Many professions have reciprocity agreements between the licensing boards of different states. Under such an agreement, a person licensed in one state is allowed to practice on a limited basis in another state without going through the process of obtaining another license. To obtain a license in the second state, the only requirement may be to file an application with the licensing board and to pass the element of the state-specific portion of the exam.

This issue has not arisen in the planning profession because only two states require licensing or registration of planners. If additional states impose licensing or registration, reciprocity will become an

important issue. Using the AICP exam as the general exam for candidates in all states will facilitate reciprocity.

Setting up the administrative machinery

State licensing and registration laws normally establish a state licensing or registration board to administer the licensing or registration statute, including overseeing the preparation, administration, and revision of the examination. Development of the examination should be a reasonably open process grounded in reality. Questions should be developed by a process that includes adequate checks and balances to ensure that the questions are fair and pertinent to the practice of planning in that state. They cannot be just a means to impose someone's pet economic, social, political, or physical design theory on the examinees — which can happen easily. Consequently, objective multiple choice questions are preferable to essay questions or open-ended design problems. Test takers should have a mechanism to challenge questions and answers that are dubious, deceptive, or outdated. AICP has established such a process to challenge questions on its exam. Look at your own state's current process for licensing architects, landscape architects, and engineers for potential approaches to incorporate into your legislation.

There is always the danger that such a board and the process it administers can become an expensive and massive bureaucracy. When drafting legislation, do all you can to minimize the bureaucracy and cost of the administrative process.

Generally speaking, a licensing or registration board will be comprised of mostly experienced people who hold the license themselves (after a special break-in period following initial adoption of the legislation and before the qualifying exam is given for the first time).

The statute should identify the board's powers and responsibilities including receiving applications; developing and administering the exam; maintaining records; establishing and collecting fees for applying for and renewing the license or registration; hiring and employing staff; issuing licenses or registration certificates; establishing the design of any seal planners will use; adopting a code of ethical conduct; and enforcing the code of ethical conduct. The board will need to develop rules and regulations that establish standards of practice, which actions violate the code of ethical conduct, and the penalties for violating the licensing or registration statute and the code of ethical conduct. Due process must be assured in any procedure that could result in the loss of an individual's license or registration.

It would be prudent to write your statute to effectively adopt the AICP Code of Professional Conduct as the state's ethical code for planners. It is a fairly mature code. At a minimum it should serve as a model for your state's code which should not be less stringent than the AICP code.

Resources

The following resources may be useful when considering the preparation of a licensing or registration statute. In addition, be sure to examine the licensing or registration statutes in your state for professions related to planning and speak with both supporters and critics of these existing licensing schemes. Above all else, be sure to solicit the views of your chapter's full membership, not just its leadership, but the planners in the trenches who would be affected by any statute adopted.

These references are offered as resources, not necessarily as models. Copies are available from the AICP's Washington office.

New Jersey licensing law: NEW JERSEY STATUTES ANNOTATED, Title 45, Chapter 14A (1997)

New Jersey administrative rules that govern operation of the State Board of Professional Planners: NEW JERSEY ADMINISTRATIVE CODE, Title 13, Chapter 41 (1997).

Michigan registration law: MICHIGAN COMPILED LAWS, Article 23 (1995)

Michigan rules that govern implementation of its registration statute: Michigan Department of Consumer and Industry Services, Rule 339.20001 et seq. (1998)

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Meck, Stuart. "Certification, Licensing, and Registration of Planners," in *Land Use Law* 3, August 1998.

Meck's article is a valuable resource for determining how to structure a licensing or registration statute as well as how the New Jersey and Michigan statutes work and what their history has been.

Spencer, James A. *Credentials for Professional Planners: A Study of Certification and Its Implications*.

Washington, D.C.: American Institute of Certified Planners, 1979. This report provides in-depth information on the development of AICP certification and its relationship to licensing and registration. It examines the veracity of the arguments made for and against licensing.

Other useful resources include:

Blair, Roger D., and Stephen Rubin. *Regulating the Professions: A Public-Policy Symposium*. Lexington, Mass.: D.C. Heath and Co., 1980. A broad-ranging review of the legal and sociological aspects of occupational licensing.

Enrenhalt, Alan. "Why We're So Hooked on Credentialism," in *Governing*, pages 7-8, November 1997. This article looks at recent popular moves to require licensing and offers standards for determining when licensing is warranted.

Hollings, Robert L., and Christal Pike-Nase. *Professional and Occupational Licensure in the United States: An Annotated Bibliography and Professional Resource*. Westport, Conn.: Greenwood Press, 1997.

Hsia, Jayjia. (ed.) *Understanding Testing in Occupational Licensing*. San Francisco: Jossey-Bass Inc., 1985. A detailed technical review of the testing of candidates for professional and occupational licenses.

Young, S. David. *The Rule of Experts: Occupational Licensing in America*, Washington, D.C.: The Cato Institute, 1987. A sample of the cautionary literature on state licensing of professions.

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