

## **Title 12 Recodification Project Stakeholder Meeting**

**October 10, 2018**

**10:00 a.m.**

**HCR 0109**

### **Persons present:**

Christy Chase, Office of Legislative Legal Services (OLLS)

Thomas Morris, OLLS

Jessica Wigent, OLLS

Karen McGovern, Dept. of Regulatory Agencies (DORA), Division of Professions and Occupations (DPO)

Jim Mantele, International Brotherhood of Electrical Workers

Rory Berumen, Rocky Mountain Chapter – National Electrical Contractors

Sharon Wilson, Engineer

Javier Carrillo, Plumber

John Andrews, National Society of Professional Engineers

Steve Conklin, National Society of Professional Engineers

Marilen Reimer, American Council of Engineering Companies of Colorado

Scott Shea, Colorado Chapter – American Institute of Architects

Nick Kirchhof, Colorado Association of Mechanical and Plumbing Contractors

Pete Kirchhof, Colorado Association of Mechanical and Plumbing Contractors

Paul Bacus, Professional Land Surveyors of Colorado

Ryan Johnston, Professional Private Investigators Association of Colorado

Audio recording of the meeting is available [here](#).

Christy Chase and Tom Morris reviewed the work of the Title 12 Recodification Project and explained the purpose of today's meeting: To discuss and obtain feedback on 1) The redraft proposal of a common provision that moves from Title 24 to Title 12 provisions pertaining to the DPO and its procedures; and 2) Practice acts concerning electricians; engineers, surveyors, and architects; landscape architects; passenger tramway operators; plumbers, nontransplant tissue banks; and private investigators.

**1. Redraft proposal on the relocation and reorganization of sections in part 1, article 34, Title 24**

Christy Chase explained that this common provision relocates numerous sections from article 34 of Title 24 to Title 12, as these provisions pertain specifically to professions and occupations, including DORA's authority to set fees and renewal schedules for licenses, registrations, and certifications. This is the third draft reviewed by stakeholders. The group approved the language in the redraft proposal.

**2. Individual Practice Acts**

Christy and Tom walked stakeholders through each practice act, explaining why changes to the language were made (e.g., to make references to "he" gender neutral), why structural changes to sections were made (e.g., when subsections within sections were renumbered); and why provisions duplicative or similar to common provisions were amended or repealed. When a provision in a practice act is more specific, more limited, or more expansive than what is included in the common provision, that unique language is not repealed in statute.

An example of when language in a practice act is repealed due to its redundancy with a common provision:

In the electricians' practice act, section 12-115-107 (2)(a) reads, in part, that the state electrical board is authorized to: "Adopt, and from time to time revise, such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this article."

The highlighted language can be stricken from statute because the general [rule-making common provision](#), section 12-20-204, applies. This common provision gives the "regulator" (which in the electricians' practice act is the state electrical board) authority to "adopt rules necessary to administer the part or article of this title 12 pursuant to which the regulator has regulatory authority." Because the language in the practice act is duplicative of the common provision, it can be stricken, and a cross-reference to the common provision can be added.

The statute will now read: "Adopt, and from time to time revise, ~~such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this article~~ PURSUANT TO SECTION 12-20-204."

Drafters' notes are provided throughout the practice act so that stakeholders can clearly understand why changes were made to each provision.

All practice acts and common provisions are available on the [Title 12 website](#).

**2a. Article 115 - Electricians Practice Act (Formerly Article 23)**

*Page 1:*

The first change to the electricians' practice act, on page 1, is the addition of a new provision, section 12-115-102, which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." For example: The [disposition of fines common provision](#), section 12-20-404 (4), has an exception for electricians, because there is unique language governing the disposition of fines collected by the state electrical board in Article 115 (see page 26 of practice act). Because of this exception, the language in the electricians' practice act was not repealed (as it will be in numerous other practice acts).

*Page 4:*

The sunset review language on lines 6 through 9 has been updated to conform with current drafting language.

Section 12-115-106 (lines 11 through 16), which hasn't been amended since 1978, has been updated to match how that same section is going to be amended in a bill currently in review by the [Statutory Revision Committee](#), which is modernizing language concerning type 1 and type 2 entities.

*Page 5:*

While it wasn't reflected in the first draft of the act, the redraft of the practice act will amend lines 27 through 30 to include a cross-reference to the [injunction common provision](#), section 12-20-406.

*Page 21:*

In this first draft of the practice act, staff questioned if subsection (9)(d), lines 8 through 10, was not only redundant of the common provision, but had already been addressed earlier in the act. However, section 12-115-120 is particular to inspections; the common provision concerning hearings is a general, disciplinary procedure provision. Because this section deals with inspections, DORA and stakeholders agreed that it is important to keep this reference in statute to ensure that licensees are aware of hearings in the context of inspections.

*Page 22:*

The stricken language on lines 9 and 10 are addressed in the disciplinary authority common provision and do not need to be repeated in the practice act. However, staff has not repealed the entire paragraph because this subsection (1) includes language that is not in the common provision. When a provision in a practice act is

more specific, more limited, or more expansive than what is included in the common provision, that unique language is not repealed in statute.

*Page 24:*

In this first draft of the practice act, subsection (2)(c)(III) was stricken; however, like the issue on page 21, this provision deals specifically with citations, and DORA and stakeholders agreed that it was important to keep this language in statute to ensure that anyone who receives a citation is made clearly aware that they are entitled to a hearing.

**2b. Article 120 - Engineers, Surveyors, and Architects (formerly Article 25)**

The structure of this practice act has been significantly updated, though the substance of the act has not been changed by this update. The goal of this change is to consolidate, within the article, overlapping provisions concerning the state board of licensure for architects, professional engineers, and professional land surveyors and the board's powers and authorities.

*Page 3:*

The first section of the new part 1, general provisions, on page 3, is the addition of a new section, 12-120-101, which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

*Page 4:*

In this new part 1, a new definitions section has been created, section 12-120-102, to include the definition of "board" and "surveyor quorum of the board." The definition of the board had been repeated in each of the parts, and the change here eliminates that redundancy.

The bulk of section 12-120-103 comes from section 12-25-106, the statute that creates the board and contains the sunset provision; however, other provisions have been lifted and placed into this statute to ensure that all statutory information about the board has been consolidated into one section.

*Page 5:*

The drafter's note on line 2 was included because subsection (4)(c)(III) concerns a surveyor quorum of the board, while subsection (6) on page 6 concerns the number of members needed to make a quorum. To avoid confusion, the small-capped

language "Notwithstanding subsection (6) of this section" has been added on line 2. DORA and stakeholders agreed that this additional language was helpful.

*Page 7:*

The drafter's note on line 16 questioned if the list of the names and addresses of record of all licensed engineers, land surveyors, and architects separated out individuals by profession. DORA stated that they do list this information separately, but the stakeholders in the room agreed that adding this language creates a duty when the choice of how to organize the list is now made internally by DORA. The language will be removed from future redrafts.

*Page 8:*

Much of the small-capped language on page 8 is taken directly from section 12-25-207 (as the drafter's notes indicate).

*Part 2: Engineers*

*Page 10:*

In subsections (1) to (3) of section 12-120-105, the "formerly" convention is used to indicate which provision the language has been directly taken from; the "similar to" is included to ensure that stakeholders can identify where this language was also included in statute.

*Page 18:*

The drafter's note on lines 34 and 35 questions whether the last sentence of section (4)(a) could be repealed, as it appears to be redundant with the [injunctive relief common provision](#), section 12-20-406. DORA and stakeholders agreed that the language was redundant and the sentence should be repealed. This will be reflected in the future redraft.

*Page 26:*

The drafter's note on lines 9 and 10 pertains to the change of the word "Renewal" to "Reinstatement" on line 8; Christy and DORA discussed the need for the change because if a license expires, it can't be renewed, it has to be reinstated. DORA and stakeholders agreed with the change, which is not a substantive change but a technical correction to an error in existing law.

*Part 3: Land Surveyors*

*Page 36:*

The drafter's note on lines 18 through 20 concerns whether we could strike the sentence "The members of the board, its staff, and the attorney general shall not be held personally liable in any such proceeding." After a discussion with DORA and

stakeholders, the decision was made to strike this language as it is duplicative of the [immunity common provision](#), section 12-20-402.

*Page 44:*

The drafter's note on lines 13 and 14 pertains to the change of the word "Renewal" to "Reinstatement" on line 13; Christy and DORA discussed the need for the change because if a license expires, it can't be renewed, it has to be reinstated. DORA and stakeholders agreed with the change, which is not a substantive change but a technical correction to an error in existing law.

*Part 4: Architects*

*Page 58:*

The last line of subsection (3) of this section, which reads "In order to obtain such injunction, the board need not prove irreparable injury." After discussion with DORA and stakeholders, the decision was made to not strike this language, as it isn't precisely redundant with the [injunctive relief common provision](#), section 12-20-406.

*Page 62:*

A drafter's note on lines 13 and 14 questioned whether the dates in this section 12-120-416 could be repealed. The current statute reads: "No later than December 31, 2008, the board shall adopt rules establishing requirements for continuing education that an architect shall complete in order to renew a license to practice architecture in Colorado on or after July 1, 2009." As the dates in this section have long passed, and the board has adopted rules, there is no need for this historical information. The amended statute will instead read "The board shall adopt rules establishing requirements for continuing education that an architect shall complete in order to renew a license to practice architecture in Colorado."

### **2c. Article 130 - Landscape Architects (formerly Article 45)**

*Page 1:*

A new section has been added to each practice act throughout Title 12 (lines 10 and 11 in this practice act), which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

*Page 2:*

The definitions of "director" and "division" on lines 3 through 7 are stricken in this practice act because those definitions are now included in the [common definitions for the entire title](#), section 12-20-102.

A drafter's note concerning the definition of "planning" in subsection (5) of this section, on lines 16 through 18, concerns the fact that the word "planning" is not used in the practice act; however the word "plan" is used. Staff plans to update this definition in a future redraft of the practice act.

Question – definition of "planning" – reluctant to strike the definition.

*Page 3:*

The drafter's note on line 6 concerned whether language "on and after January 1, 2008," was needed for historical purposes. After receiving feedback from stakeholders, that language will remain in statute.

The drafter's note on line 14 concerns whether the phrase "or persons who are eligible to be licensed in Colorado as landscape architects at the time of the formation of the board" was obsolete and could be repealed. After receiving feedback from stakeholders, this language will be repealed in a future redraft.

#### **2d. Article 150 Nontransplant Tissue Banks (formerly Article 54.5)**

This section includes very few changes, as there are very few sections that are redundant with the common provisions.

A new section has been added to each practice act throughout Title 12 (lines 1 and 2 in this practice act), which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

The definitions of "director" and "division" are stricken in this practice act because those definitions are now included in the [common definitions for the entire title](#), section 12-20-102. Changes to refer to, or rely entirely on, the common provisions were also made in section 12-140-103 (1)(b), (1)(c), and (3) regarding registration fees and section 12-140-107 (1) and (2) regarding disciplinary authority and procedures.

#### **2e. Passenger Tramways**

While passenger tramway operators are regulated by the Department of Regulatory Agencies, they are currently codified in Title 25, not Title 12. Staff proposes to relocate these statutes to Title 12.

*Page 1:*

A new section has been added to each practice act throughout Title 12 (lines 9 and 10 in this practice act), which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

*Page 2:*

The drafter's note on lines 8 and 9 questions whether the definition of "commercial recreational area" is accurate or needed, as it doesn't appear to be used anywhere in the article.

*Page 9:*

The drafter's note on lines 18 and 19 is included because [section 12-20-202 \(1\)](#) of the common provision states that the director governs the expiration dates of licenses, so question is whether or not this line 18 can be repealed or whether it should include a cross-reference to that specific common provision.

*Page 12:*

The sunset review language on lines 2 through 4 has been updated to conform with current drafting language.

## **2f. Article 155 Plumbers (Formerly Article 58)**

*Page 2:*

A new section has been added to each practice act throughout Title 12 (lines 23 and 24 in this practice act), which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

*Page 5:*

Subsection (1) of section 12-155-104 (lines 19 through 25) has been updated to match how that same section is going to be amended in a bill currently in review by

the [Statutory Revision Committee](#), which is modernizing language concerning type 1 and type 2 entities.

*Page 6:*

The sunset review language on lines 6 through 9 has been updated to conform with current drafting language.

*Page 18:*

The drafter's note on lines 2 through 9 concerns a cross-reference that may be incorrect in section 12-58-112 (4): "The original cross-reference may be incorrect. This provision appears to provide a limited exception to the requirement in current sec. 12-58-105 (3) that a plumbing contractor either be or employ a full-time master plumber in order to qualify for a registration. The cross-reference to sec. 12-58-107 (1) pertains to the issuance of licenses to, and required experience of, residential, journeyman, and master plumbers. Sec. 12-58-107 (1) does not mention plumbing contractors. Should the cross reference be changed? Or should section 12-58-105 (3) be added to the cross-reference?" Staff would very much appreciate feedback concerning this potential issue. Please contact [Christy Chase](#) or [Tom Morris](#).

*Page 22:*

In this first draft of the practice act, staff questioned if subsection (7)(d), lines 36 - 37, was not only redundant of the common provision, but had already been addressed earlier in the act. However, section 12-155-120 is particular to inspections; the common provision concerning hearings is a general, disciplinary procedure provision. Because this section deals with inspections, DORA and stakeholders agreed that it is important to keep this reference in statute to ensure that inspectors are aware of this provision.

### ***2g. Article 160 Private Investigators (Formerly Article 58.5)***

*Page 2:*

A new section has been added to each practice act throughout Title 12 (lines 30 and 31 in this practice act), which states that articles 1 and 20 of (the newly reorganized) Title 12 apply, according to their terms. Articles 1 and 20 contain the common provisions that are applicable to all professions and occupations in Title 12. The important phrase to note is "according to their terms." Many common provisions include exceptions because language in the practice act is markedly different from, or broader or more limited, than the language in the common provision.

The definitions of "director" and "division" (lines 37 through 40) are stricken in this practice act because those definitions are now included in the [common definitions for the entire title](#), section 12-20-102.

*Page 3:*

The drafter's note on lines 38 and 39 questions whether the language referencing the date in subsection (1)(a), "By June 1, 2015," is obsolete and can be repealed. After a discussion with stakeholders, who commented that this practice act hasn't yet been through sunset review, and that that time would be a more appropriate time to repeal the language, the decision was made to keep that language in statute.

*Page 13:*

The sunset review language in section 12-160-111 has been updated to conform with current drafting language.

### ***3. Next Steps***

The next meeting is scheduled for Wednesday, October 17<sup>th</sup>, at 10:00 a.m. in HCR 0109 and will cover:

- A new redraft of the health care common provision concerning mental and physical examinations
- The following practice acts: acupuncturists, athletic trainers, audiologists, chiropractors, hearing aid providers, and massage therapists