

- SUBJECT:** Continuing the Texas Board of Architectural Examiners
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 8 ayes — Flores, Hamilton, Driver, Eissler, Goolsby, Homer, D. Jones, Wise
0 nays
1 absent — Raymond
- SENATE VOTE:** On final passage, April 25 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 1790:*)
For — Dennis Borel, Coalition of Texans with Disabilities; Glenn Cheeks, AECC Corp. and The Collaborative; David Lancaster and John Nyfeler, Texas Society of Architects; Ann McGinnes, Brandi Reaves, and Cleve Turner, American Society of Landscape Architects, Texas Chapter

Against — Robert Alford, Jose R. Mosleno, and Jeff Koellman, Texas Institute of Building Design; Sergio Astorga, Newell Cheatham, Ray Cox, and Larry Weatherley, Society of Professional Building Designers of Texas; Marvin L. Griffin; Connie Heyer, Texas Mini-Storage Association; Janet L. Hobbs; Horace Hooper; Scott Joslove, Texas Hotel and Motel Association; Amilcar Horacio Moreno; Larry Niemann, Texas Building Owners and Managers Association; Bruce Ashworth Sommers, Ashworth Construction and Texas Institute of Building Design, Houston Chapter; Ray Tonjes, Texas Association of Builders; Chris Vamvakias, Construction Services Group

On — Steve Ellinger and Cathy L. Hendricks, Texas Board of Architectural Examiners; Amy Trost, Sunset Advisory Commission
- BACKGROUND:** V.T.C.A., art. 249 (Occupations Code, ch. 1051-1053, effective June 1, 2003) governs professional architects, landscape architects, and interior designers under regulation of the Board of Architectural Examiners, a nine-member body with at least one member from each profession (four architects, one landscape architect, and one interior designer) and three public members. The

board was established after a school fire in 1937 claimed hundreds of lives. It began regulating landscape architects in 1979 and interior designers in 1991.

The 76th and 77th Legislatures created the Self-Directed, Semi-Independent (SDSI) pilot project, which took effect in September 2001, allowing more fiscal autonomy for the board, as well as for the Board of Public Accountancy and the Board of Professional Engineers. The boards deposit their collected fees, fines, and other money into a trust fund in the treasury and withdraw funds as needed to meet their budgets, which they adopt independent of legislative appropriation and oversight. They may not charge salaries or other costs to general revenue. Accordingly, the Board of Architectural Examiners employed no state workers and had no state budget in fiscal 2003.

During fiscal 2002, the board operated with 22 full-time employees and an annual budget of \$2.3 million, all of which came from licensing fees. It regulated about 11,000 architects, 1,300 landscape architects, and 7,500 interior designers. It received 410 complaints, of which it resolved 340.

The Board of Architectural Examiners will expire September 1, 2003, unless continued by the Legislature.

DIGEST:

CSSB 283 would continue the Board of Architectural Examiners until 2015 and would change the nine-member board by requiring membership of three architects and two interior designers, instead of the current four architects and one interior designer. A member appointed to the board as an architect, landscape architect, or interior designer could not hold more than one of those designations.

The board could prescribe forms and adopt reasonable rules and bylaws to regulate the practices of landscape architecture and interior design. It would have to adopt detailed rules for receiving and adjudicating complaints from consumers and service recipients. The attorney general would serve as legal advisor to the board and would have to provide legal assistance in enforcing the statute and the board's rules. The bill would not relieve a local prosecuting attorney of any duty.

CSSB 283 would require architects, landscape architects, and interior designers to include in written contracts the name, mailing address, and

telephone number of the board and a statement that the board has jurisdiction over the registered person. These professionals would have to display their certificates of registration prominently in their places of business.

The board would have to administer its examination in compliance with the federal Americans with Disabilities Act. The bill would stipulate provisions for examination fees, refunds, record-keeping, renewals, notification of results, and reciprocity with other jurisdictions. The bill would add landscape architects and interior designers to the current provision exempting an architect from paying fees while on active duty in the military.

The board by rule could require registration by a firm, partnership, corporation, or association that engages in the practice of architecture, landscape architecture, or interior design. The board would have to adopt an administrative penalty schedule for violations.

A person would be entitled to a hearing before an administrative law judge if the board suspended, revoked, or refused to renew the person's certificate of registration. A hearing would qualify as a contested case under the state's Administrative Procedures Act, and all disciplinary procedures would have to be published as provided by the board. The bill would specify minimum terms for applying for reinstatement of a denied or revoked certificate. It would increase the maximum administrative penalty from \$1,000 to \$5,000.

The board could issue cease-and-desist orders to stop conduct that conflicted with state law or rule related to the practice of architecture, landscape architecture, or interior design. A person subjected to such an order would be entitled to a hearing under the Administrative Procedures Act. The board would have to adopt rules to implement these procedures and could order payment of restitution to a consumer.

Advisory board. CSSB 283 would create an advisory committee to the Board of Architectural Examiners and the Board of Professional Engineers, which would have to enter an agreement about the advisory committee, including an understanding of its composition and purpose. The advisory committee would comprise three members of each board. It would have to resolve issues that resulted from the overlap of the practices of architecture and engineering, and it would have to issue advisory opinions to both boards.

The advisory opinions would address whether a practice was architecture or engineering, the propriety of discipline in cases initiated by either board, and the possible need for registration with either board before performing an activity that could require regulation by one board or the other. If the advisory committee issued an opinion to either board, the notified board would have to notify the advisory committee of the final action taken. In turn, the advisory committee would have to consider the action taken by the board in making any future advisory opinion.

Architectural practice. CSSB 283 would prohibit a public official responsible for enforcing laws that affect the practice of architecture from accepting an architectural plan, specification, or other related document if it was not prepared by an architect or by a person acting under the supervision of an architect, as evidenced by the presence of an architect's seal. The board would have to prescribe and approve the seal to be used by an architect, which would have to read "Registered Architect, State of Texas."

The bill would exempt from certification and from other regulations a building designer who designs a warehouse with limited public access or a privately owned commercial building that does not exceed a height of two stories or an area of 5,000 square feet, rather than 20,000 square feet as in current law.

The board could set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover its cost, unless already set by the general appropriations act. The bill would increase by \$200 the fee for issuing a renewal certificate. Of that increment, \$50 would be deposited in the foundation school fund and \$150 in general revenue.

The board would have to administer scholarships to applicants for examination. The board could charge an amount reasonable and necessary to cover the cost of the registration examination.

The board could put on probation an architect whose certificate had been suspended or who:

- gave false or forged evidence to the board or a board member in obtaining or helping another person to obtain a certificate;

- aided or abetted a nonregistered architect in violating the statutory regulation of architects; or
- used or attempted to use another person's certificate.

A person would commit an offense if, in violation of the statute, the person:

- engaged or offered or attempted to engage in the practice of architecture;
- prepared architectural plans or specifications for and observed or supervised the construction, enlargement, or alteration of a building for another person; or
- advertised or put out a sign, card, or drawing that designated the person as an architect or architectural designer or used another title that incorporated a form of the word "architect."

Such an offense would be punishable by a fine of between \$250 and \$1,000. Each day of violation would be a separate offense. The board could be represented by a district or county attorney or other counsel as necessary.

Landscape architects. A landscape architect would have to be registered with the board. The bill would define landscape architecture as the art and science of landscape analysis, landscape planning, and landscape design. It would include consulting, researching, collaborating, supervising, and preparing general development and site design plans, studies, and specifications for:

- manipulating land forms;
- designing natural and artificial landscape features;
- writing and drawing landscape development programs;
- coordinating and reviewing technical plans and documents;
- preparing estimates; and
- locating structures, hard surfaces, environmental systems, and lighting.

It also would include collaborating in the design of roads, bridges, and structures and in field observation of landscape site construction, re-vegetation, and maintenance. Landscape architecture would *not* include:

- engineering traffic, roadway, or pavement;

- designing utilities;
- engineering or studying hydrologic management of stormwater systems or flood plains;
- making final plats; or
- a service or function within the practice of architecture, engineering, or public surveying as defined by state law.

Restrictions under Occupations Code, ch. 1052 would not apply to a person who did not represent that he or she was a landscape architect, did not use a business or professional title including the phrase “landscape architect,” or was a landscape architect registered outside the state who did not open or maintain a business in Texas and who complied with other requirements.

A person who agreed to perform or represented that he or she could perform a professional service involved in the practice of landscape architecture could perform the service only if the person employed a landscape architect registered as a consultant under ch. 1052 or acted as a consultant of a registered landscape architect.

A person could not practice landscape architecture without obtaining a certificate of registration if the person designed landscapes for public accommodation or that otherwise affected public health, safety, or welfare. This provision would not apply to a person licensed in Texas to practice architecture or engineering.

The board could place on probation a person whose certificate was suspended and could impose discipline for recklessness, gross incompetency, acting dishonestly in the practice of landscape architecture, or aiding or abetting a person not registered under ch. 1052 in violating the statute.

Interior designers. An interior designer would have to be registered with the board. The bill would define interior design as:

- identification, research, or development of a solution to a problem relating to the function or quality of an interior environment;
- a service relating to an interior space, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles by using specialized knowledge; or

- preparation of an interior design plan, specification, or related document about the design of a non-load-bearing interior space.

The bill would not apply ch. 1053 to registered architects or to an interior designer registered outside the state who did not open or maintain a business in Texas and who complied with other requirements. Such a person could perform an interior design service in Texas if the person employed an interior designer registered in Texas as a consultant or who acted as a consultant of a registered interior designer.

The board would have to approve the seal used by an interior designer, which would have to contain the words "Registered Interior Designer." An interior designer would have to maintain and use the seal to impress each drawing or specification issued from the designer's office. Another person could not use the seal without the designer's personal supervision, and an interior designer could not use the seal of another interior designer.

The board could place on probation a person whose certificate was suspended and could discipline an interior designer for an act of recklessness, gross incompetency, or misconduct in the practice of interior design. The board also could discipline an interior designer for:

- giving false or forged evidence to the board or member of the board in helping another person to obtain a certificate of registration;
- using or attempting to use as the person's own the certificate another person; or
- acting dishonestly in the practice of interior design.

The bill also would add standard sunset language governing conflicts of interest, training and removal of board members, separation of staff and policy functions, equal employment opportunity and policy, the State Employee Incentive Program, technology policy, and information maintenance.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 283 would continue the Board of Architectural Examiners, which, along with its professional staff, already regulates efficiently three complex

and interrelated professional practices — architecture, landscape architecture, and interior design. The board has a history of exercising good stewardship and was chosen by the Legislature to participate in the SDSI pilot program for that reason. Any initiative to abolish the board and assign its functions to a new agency would be ill-timed and unnecessary.

The bill would reduce the number and expense of design errors, which often cost more than the relatively higher price of registered architects' design services. In recent years, building designers and other nonregistered designers have created a large number of faulty plans for private structures ranging in size from 5,000 to 20,000 square feet — the category of building that CSSB 283 would bring under regulation. As one example, a faulty original plan for an Amarillo church by an unlicensed designer required five plan reviews by the city that drew 123 comments and resulted in a year-long delay.

Municipal and state building plan reviewers report that a disproportionate number of plans prepared by building designers do not satisfy the Texas Architectural Barriers Act. Hotels in San Antonio, Forest Hill, Baytown, and Port Arthur designed by nonregistered designers have failed inspection for compliance with accessibility codes. Under CSSB 283, private structures frequented by elderly or disabled people could be designed only by registered architects. The average Walgreens store, for example, occupies 14,500 square feet.

An existing statute allows experienced building designers without architecture degrees to practice architecture under certain conditions crafted to protect the public. A building designer or other person without an architecture degree may pass the architecture examination and become registered as an architect if the designer began to obtain experience in architecture before September 1, 1999, and furnishes evidence to the board of having completed at least eight years of architectural schooling or experience working in the office of an architect. Most current building designers began to obtain experience in architecture before September 1999. Therefore, most would qualify to pursue registration as an architect under this exception.

**OPPONENTS
SAY:**

By prohibiting nonarchitects from designing commercial buildings larger than 5,000 square feet, CSSB 283 would impose an unfair burden on consumers and on nonregistered designers. Registration with the Board of Architectural

Examiners requires passing an examination that, in most cases, only a graduate of a recognized university or college of architecture may pass. Current law allows people not registered with the board to design and supervise the construction, enlargement, and alteration of buildings that do not exceed a height of two stories or 20,000 square feet. This standard should remain in effect.

CSSB 283 would restrict building designers from competing to design structures that do not require the sophistication or expense of an architect. This would hinder competition and increase costs. Building designers have planned successfully large strip centers, warehouses, storage units, churches, and motels in Texas that they could not design under the bill's limitation. People who commission the design of such utilitarian structures often want only inexpensive and safe structures designed to suit their simple and sometimes temporary needs. The bill would require consumers to pay substantially more for these and other designs, because the cost of an architect's design services averages twice the cost of a building designer's services.

CSSB 283 could prove especially costly for renovators. A large commercial building might contain subdivided apartments or offices in need of alteration and totaling less than 5,000 square feet. If the building itself exceeded 5,000 square feet, however, building designers could not prepare architectural plans to alter the subdivided spaces.

Current law already adequately protects the safety and welfare of building occupants and owners. Construction codes mandate detailed standards that builders must satisfy. Also, most building designers self-regulate through private associations such as the National Council of Building Designer Certification and the Society of Professional Building Designers of Texas. These organizations require minimum standards, including testing and other criteria, to ensure members' competency. Also, existing law allows only a registered architect to design institutional residential facilities; new public schools, offices, or buildings used for assembly that cost more than \$100,000; and certain alterations to public structures that cost more than \$50,000.

OTHER
OPPONENTS
SAY:

While the functions of the Board of Architectural Examiners should be continued, a separate agency is not needed to perform these functions. The state could realize administrative savings by consolidating this and other professional licensing and regulatory boards under a single agency.

NOTES:

The fiscal note for CSSB 283 projects an annual net gain of \$87,680 in general revenue due to increasing the maximum administrative penalty charged by the board from \$1,000 to \$5,000.

CSSB 283 is identical to CSHB 1790 by Chisum, et al., as reported by the House Licensing and Administrative Procedures Committee on April 24.

The committee substitute added the requirement that an architect design buildings that exceed 5,000 square feet. The Senate engrossed version of SB 283 would not have changed the composition of the board or authorized the board to require registration by architecture, landscape architecture, and interior design firms.

Legislation enabling the SDSI pilot program for the Board of Architectural Examiners and other boards expires September 1, 2003. The Sunset Advisory Commission has recommended allowing the program to expire. HB 1947 by Flores would have reauthorized the SDSI program until September 1, 2009. The bill was reported favorably by the House Appropriations Committee and was placed on the House Major State Calendar for May 10 but was postponed and died in the House.

A related bill, HB 1692 by Driver, would require a person who practices interior design to register with the Board of Architectural Examiners. The board would have to adopt and enforce rules governing the conduct and qualifications of interior designers. HB 1692 passed the House on May 5 and has been referred to the Senate Business and Commerce Committee.