

- SUBJECT:** Continuing the Texas Board of Architectural Examiners
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 5 ayes — Smith, Kuempel, Geren, Guillen, Price
0 nays
4 absent — Gooden, Gutierrez, Miles, S. Thompson
- WITNESSES:** For — Kelley Barnett, Texas Interior Designers for Deregulation; Matt Miller, Institute for Justice; Shea Pumarejo; Donna Vining, Texas Association for Interior Design; (*Registered, but did not testify:* Tim Bargainer, and Dean McWilliams, American Society of Landscape Architects - Texas; Brent Luck, American Society of Landscape Architects; David Lancaster, Texas Society of Architects; Pat McLaughlin; Julie Reynolds; Marilyn Roberts)

On — (*Registered, but did not testify:* Scott Gibson, Cathy Hendricks, and Sonya Odell, Texas Board of Architectural Examiners; Carrie Holley-Hurt and Joe Walraven, Sunset Advisory Commission)
- BACKGROUND:** The Texas Board of Architectural Examiners licenses architects, landscape architects, and registered interior designers. The board receives and investigates complaints, takes enforcement action, and provides information to the public, licensees, and building officials.

The nine-member, governor-appointed board includes four architects, one landscape architect, one registered interior designer, and three public members, at least one of whom must have a physical disability. The board had 22 employees in fiscal 2011. That same year, it regulated 12,482 architects, 1,485 landscape architects, and 5,217 registered interior Designers.

As a self-directed semi-independent agency, the board funds itself through licensing fees and administrative penalties instead of receiving legislative appropriations. In fiscal 2011, the board collected \$2.8 million in licensing and administrative fees and spent \$2 million on agency operations. The

board also sent \$3.3 million in professional fees to the general revenue fund.

The board last underwent Sunset review in 2002-03. Unless continued, the board's authority will expire September 1, 2013.

Occupations Code, sec. 1053.154 requires an applicant seeking certification as a registered interior designer to pass an examination set by the board, which may be the National Council for Interior Design Qualification (NCIDQ) exam or equivalent. Under sec. 1053.158, a registered interior designer who has practiced for six years, began practicing before September 1, 1991, and applied for registration before September 1, 1994, may receive certification without passing the examination.

Occupations Code, sec. 1051.651(b) governs fees set by the board for renewal of architect's licenses. The amount of the fee must equal the sum of the costs of the examination fee scholarship program and the costs of administering the renewal for in-state applicants.

DIGEST:

HB 1717 would continue the Texas Board of Architectural Examiners until September 1, 2025.

By repealing Occupations Code, sec. 1053.158 and amending sec. 1051.351, the bill would require all registered interior designers who had not passed the NCIDQ or a similar examination to meet the examination requirements by September 1, 2016, to renew their registered interior designer certificates.

HB 1717 would change or increase many of the administrative fines and fees charged by the board. For architects, landscape architects, and registered interior designers seeking renewal of expired certificates, the bill would direct the board to peg the late fees for renewal to a multiple of the regular renewal fees charged to architects, which are determined under Occupations Code, sec. 1051.651(b). The bill also would increase by \$200 the fee for initial and renewed certificates issued to architects.

In imposing an administrative penalty to punish a violation by an architect, landscape architect, or registered interior designer, the board would consider each day a violation occurred or continued as a separate violation beginning September 1, 2013.

Beginning January 1, 2014, HB 1717 would require criminal background checks for all applicants for initial or renewed certification as an architect, landscape architect, or registered interior designer. Applicants for initial certification would be required to submit a complete and legible set of fingerprints to the board or the Department of Public Safety (DPS) for the purpose of conducting state and national criminal history checks. If DPS conducted the background check, it could collect from applicants the costs incurred. Applicants for renewed certification would not have to submit fingerprints if they had done so during a previous application for initial or renewed certification.

The bill would take effect September 1, 2013, and the board would adopt rules to implement HB 1717 by December 1, 2013.

**SUPPORTERS
SAY:**

HB 1717 appropriately would continue the Texas Board of Architectural Examiners in its current form, with authority over licensing architects, landscape architects, and interior designers. As an SDSI agency, the board not only covers its own operating expenses while contributing to general revenue, it also has independence and flexibility in how it conforms to new challenges in the regulatory landscape. The Sunset Advisory Commission concluded that reorganizing the board by combining it with the Texas Department of Licensing and Regulation (TDLR) or with the Texas Board of Professional Engineers (TBPE) would not generate significant efficiencies.

The board should continue to regulate interior design, as recommended by the Sunset Commission. Registered interior designers make decisions about plans that impact public safety and welfare. They help ensure that plans meet local building codes as well as federal and state safety, accessibility, and energy efficiency requirements. These functions are particularly important in plans to build the interiors of nursing homes, schools, hospitals, and other sites with statutory building requirements.

The private industry qualification favored by some who oppose HB 1717 is not a substitute for official licensing, which ensures that licensees undergo continuing education and a background check. Many contracts for bid, especially from public universities and hospitals, include language requiring that those submitting plans be “registered design industry professionals.” Only state-registered interior designers meet this requirement.

Removing the authority of the board to offer a registered interior design license, as advocated by some critics of HB 1717, would have an adverse effect on the 14 Texas colleges and universities offering interior design programs, and would be unfair to the students in two- and four-year programs who have invested time and money to achieve these qualifications. Several industry associations have expressed a desire for continued regulation under the board.

HB 1717 would ensure that the “registered interior designer” designation remained meaningful by eliminating the grandfather clause allowing certain interior designers to use the title without taking a qualifying exam. An estimated 60 percent of registered interior designers have never taken the NCIDQ or its equivalent. This unfairly allows registered interior designers with ostensibly the same qualifications to practice under two different standards, which is unfair to consumers who expect a certain level of quality and to registered interior designers who have completed all the certification requirements.

Other provisions in HB 1717 would make the statute for the Texas Board of Architectural Examiners more consistent and uniformly applied. Pegging the late fees for renewal to a multiple of an architect’s regular renewal fee would be fairer, as would increasing by \$200 the initial and renewed certification for architects. This would match practices for landscape architects and registered interior designers. In addition, considering a violation a new violation each day it continued would match enforcement practices at other agencies.

By allowing the board to conduct fingerprint background checks on applicants, HB 1717 would enable a more comprehensive version of the background checks already in place for licensees. Fingerprints give DPS a higher degree of certainty when screening the criminal backgrounds of applicants, enabling the agency to also check for out-of-state offenses.

**OPPONENTS
SAY:**

The bill’s provisions on licensing interior design and requiring licensees to submit fingerprints for criminal background checks should be reconsidered.

Only 26 states license interior design, and Texas should follow suit in this bill by removing the authority of the board to license registered interior designers. Even if one considers the regulation of interior design as vital to

the public health and welfare, the board's regulation of the industry cannot reach very far because unregistered interior designers may legally practice and only a subset of all designers seek state registration. The board processes very few complaints about registered interior designers, who were the subject of only five complaints and two enforcement actions in fiscal 2011. Unlike architects or landscape architects, no type of work is statutorily mandated to be completed by interior designers, nor is their seal required on plans before construction. Private industry groups offer alternative means of demonstrating competence, namely by taking and passing the NCIDQ exam.

If licensing is to continue, the grandfather provision for long-practicing, registered interior designers who applied for the license prior to 1994 should not be eliminated. The years of experience they have in the industry should be an adequate demonstration of the quality and standard of work they produce. The NCIDQ is a three-part test costing \$965 that roughly one-third of testers fail. Experienced interior designers should not be required to spend time and money taking the test and placing at risk their designation as a registered interior designer. Those who chose not to pursue the qualification would experience financial repercussions, as many bids include a requirement for work to be completed by "registered design industry professionals." In addition, by reducing the pool of registered interior designers, the bill would limit the opportunities for aspiring registered interior designers because candidates must serve a probationary period working under a registered interior designer before they can take the NCIDQ.

At the very least, HB 1717 should extend the amount of time available to grandfathered, registered interior designers to satisfy the new requirement to take the exam. The NCIDQ has three sections, and must be taken in at least two sittings, offered twice a year. The bill's deadline of September 1, 2016 would not provide enough time for grandfathered, registered interior designers who did not pass at the first attempt to retake the exam.

Also, HB 1717 should not require architects and interior designers to submit fingerprints for a criminal background check before receiving their licenses. An FBI background check would be intrusive and out of proportion to the type of work performed by these professionals.

OTHER
OPPONENTS

The Texas Board of Architectural Examiners' SDSI status should be removed, and the board should be consolidated into another regulatory

SAY: agency, such as the Texas Board of Professional Engineers (TBPE) or the Texas Department of Licensing and Regulation (TDLR). TDLR has a good track record of administering its licensing programs, including lowering the fees for its licensees. Having taken the board out of the appropriations process, the Legislature can no longer exercise effective oversight over it.

Combining multiple occupational licensing programs into a single agency prevents regulatory capture by the regulated industries. TDLR already has experience with many of the regulatory issues covered by the board, including regulating Americans With Disabilities Act compliance with its Architectural Barriers and Industrialized Housing and Buildings programs, and could easily absorb the functions of the Board of Architectural Examiners.

NOTES: The companion bill, SB 205 by Nichols, has been referred to the Senate Business and Commerce Committee.

According to the fiscal note, HB 1717 would result in a gain to the state of \$112,000 in fiscal 2014-15 due to the \$200 increase in professional fees for architects. Three-quarters of this money would be deposited in general revenue, with the remainder going to the Foundation School Fund.