

BILL ANALYSIS

Senate Research Center

H.B. 1248
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State Affairs
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Engrossed

DIGEST

H.B. 1248 changes the laws regulating the practice of architecture, landscape architecture, and interior design in the state of Texas to require proof of continuing education for architects, allows payment by credit card, and allows the Texas Board of Architectural Examiners (board) to subpoena witnesses in investigations of violations; eliminates a \$200 registration fee; eliminates the ability to become a registered architect without formal education; allows the board to impose fines for violations by non-architects, specifies appeal procedures; requires proof of continuing education as a condition of registration renewal, allows the board to set fees for late registration renewal; clarifies the types of buildings that require a registered architect; eliminates the ability to become a landscape architect without formal education; requires proof of continuing education from landscape architects, requires landscape architects to apply an official seal to their work and prohibits non-landscape architects from using such a seal, and allows the board to subpoena witnesses on investigation of violations; requires interior design registration applicants to complete educational programs before becoming registered; requires proof of continuing education from interior designers, and allows the board to set fees for late registration renewal; and provides for administrative penalties.

PURPOSE

As proposed, H.B. 1248 establishes provisions regarding the regulation of the practice of architecture, landscape architecture, and interior design, and provides certain penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Architectural Examiners in SECTION 1.09 (Section 7A, Article 249a, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. REGULATION OF PRACTICE OF ARCHITECTURE

SECTION 1.01. Amends Sections 2(a), (e), (g), and (h), Article 249a, V.T.C.S., to set forth the membership of the Texas Board of Architectural Examiners (board). Makes nonsubstantive changes.

SECTION 1.02. Amends Section 3, Article 249a, V.T.C.S., by amending Subsections (a), (e), (h), and (i), and adding Subsection (j), to require the bond filed by the secretary-treasurer to be paid from the general revenue, rather than architectural examiners, fund. Requires, rather than authorizes, the board to recognize, prepare, or administer continuing education programs for architects, interior designers, and, rather than or, landscape architects, including certain programs. Provides that participation in the program is mandatory, rather than voluntary. Authorizes the board to accept payment of a fee by electronic means, if a fee is paid by electronic means, and to charge a fee for processing the payment by electronic means. Requires the board to set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment by electronic means, not to exceed five percent of the amount of the fee. Updates statutory reference. Authorizes the board to request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this article. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held, if a person fails to comply with a subpoena issued under this subsection. Requires the court, if it determines that good cause exists for the issuance of the subpoena, to order compliance with the requirements of the subpoena. Authorizes failure to obey the order of the

court to be punished by the court as contempt.

SECTION 1.03. Amends Section 4(a), Article 249a, V.T.C.S., to require all fees collected or money derived to be received and accounted for by the executive director, rather than secretary-treasurer, and paid daily, rather than weekly, to the comptroller. Deletes a procedure for handling money for the architectural examiners fund.

SECTION 1.04. Amends Section 4A, Article 249a, V.T.C.S., to make conforming changes.

SECTION 1.05. Amends Section 4C(a), Article 249a, V.T.C.S., to delete from a list of fees increased by \$200 a fee for application for examination, and a fee for out-of-state application for examination, and makes nonsubstantive changes.

SECTION 1.06. Amends Section 5A(a), Article 249a, V.T.C.S., to make a conforming change.

SECTION 1.07. Amends Section 6(a), Article 249a, V.T.C.S., to make a conforming change.

SECTION 1.08. Amends Section 7, Article 249a, V.T.C.S., to delete a provision requiring the board to accept for examination an applicant who has not graduated who can present satisfactory evidence of eight years satisfactory experience.

SECTION 1.09. Amends Chapter 478, Article 249a, V.T.C.S., by adding Section 7A, as follows:

Sec. 7A. Requires the board to deposit \$10 of each certificate of registration renewal fee to the credit of the scholarship fund for architectural examination applicants. Provides that the scholarship fund is an account in the general revenue fund that may be appropriated to the board only if certain conditions exist. Requires the interest earned on the scholarship fund to be credited to the fund. Prohibits the board from using more than 15 percent of the amount appropriated to the board, in order to pay the board's administrative costs. Provides that the amount of each scholarship is the lesser of \$500 or the fee prescribed by the board for the examination. Sets forth certain findings by the legislature. Requires the board to establish and administer scholarships in a manner that the board determines best serves the public purpose of the scholarship. Requires the board to consider at a minimum the financial need of each person applying for a scholarship. Requires the board to adopt rules as necessary for the administration of this section.

SECTION 1.10. Amends Section 8(b), Article 249a, V.T.C.S., to require all applications under this section to be accompanied by a fee prescribed by the board in an amount that is reasonable and necessary to cover the cost of, rather than \$150 to the Texas Board of Architectural Examiners for, processing and investigating the application and issuing the certificate. Make nonsubstantive changes.

SECTION 1.11. Amends Sections 11(b), (i), (l), (n), (o), and (q), Article 249a, V.T.C.S., to authorize the board to assess an administrative penalty to a person regardless of the person's registration status based on certain conditions. Provides that all proceedings under this subsection relating to a person charged who holds a registration certificate issued by the board are subject to Chapter 2001, Government Code. Provides that the board's order becomes final, if the person charged holds a registration certificate, Government Code, and on the 20th day after the order is rendered if the person does not hold a registration certificate. Deletes a provision providing that failure to comply timely with the requirements to file a petition requesting judicial review results in a waiver of all legal rights to judicial review. Makes a conforming and nonsubstantive changes

SECTION 1.12. Amends Sections 12(c), (d), (e), (f), (g), and (h), Article 249a, V.T.C.S., to require the board to set the required renewal fee for residents and nonresidents in an amount reasonable and necessary to cover administrative costs plus \$10 determined by the board. Requires the board to issue to the registered architect a certificate of renewal of his or her registration certificate for the term of one year upon receipt of proof satisfactory to the board of compliance with the continuing education requirement of the board. Makes conforming and nonsubstantive changes.

SECTION 1.13. Amends Section 14, Article 249a, V.T.C.S., to require a person to be exempt from the provisions of this article if the person prepares plans for a building that does not exceed a square footage of 20,000 square feet and meets certain enumerated conditions. Makes conforming changes.

ARTICLE 2. REGULATION OF PRACTICE OF LANDSCAPE ARCHITECTURE

SECTION 2.01. Amends Section 4(b), Article 249c, V.T.C.S., to authorize the board to accept payment of a fee by electronic means. Authorizes the board to charge a fee for processing the payment by electronic means, if a fee is paid by electronic means. Requires the board to set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment by electronic means, not to exceed five percent of the amount of the fee.

SECTION 2.02. Amends Section 5(a), Article 249c, V.T.C.S., to provide that no person shall represent himself as a landscape architect unless such person holds a certificate of registration as a landscape architect issued by the board. Provides that a person must satisfactorily pass the examination as prescribed by the board. Authorizes any person who has graduated from a landscape architectural program recognized and approved by the board and has had satisfactory experience in landscape architecture as required by rules adopted by the board to apply for examination. Deletes the limit on the registration fee to no more than \$250.

SECTION 2.03. Amends Sections 7(d), (e), (f), (g), and (h), Article 249c, V.T.C.S., to make conforming and nonsubstantive changes.

SECTION 2.04. Amends Section 8, Article 249c, V.T.C.S., to authorize, rather than require, the board to revoke or suspend a certificate of registration, place on probation, reprimand, or assess an administrative penalty against a person, regardless of the person's registration status, in an amount not to exceed \$1,000 on enumerated grounds. Authorizes the executive director of the board (executive director) to issue a report stating the facts on which the determination that a ground exists for a sanction is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty, if after an investigation of the facts surrounding an allegation of grounds for sanctions the executive director finds such grounds to exist. Requires the executive director to base the recommended amount of the proposed penalty on the seriousness of the determined ground. Requires the seriousness of the ground to be determined by consideration of the factors prescribed by Subsection (j) of this section. Requires the executive director to give written notice of the report to the person charged not later than the 14th day after the date on which the report is issued. Requires the notice to include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of a ground for the penalty or on the amount of the penalty, or both the occurrence of the ground and the amount of the penalty. Authorizes the person charged to accept the determination of the executive director, including the recommended penalty, or to make a request for a hearing on the determination not later than the 20th day after the date on which the notice is received. Requires the board to issue an order approving the determination and ordering the payment of the recommended penalty if the person charged accepts the determination of the executive director. Requires the board to set a hearing and give notice of the hearing if the person charged requests a hearing or fails timely to respond to the notice. Provides that all proceedings under this subsection relating to a person charged who holds a registration certificate issued by the board are subject to Chapter 2001, Government Code. Sets forth considerations in determining the amount of the penalty by the board. Requires the executive director to give notice of the board's order to the person charged including certain specified information. Provides that the board's order becomes final, if the person charged holds a registration certificate, and on the 20th day after the order is rendered if the person does not hold a registration certificate. Requires the person charged with the penalty to pay the penalty in full unless the person has filed a petition for judicial review of the order. Requires, if the person files a petition for judicial review contesting the amount of the penalty or the occurrence of the ground for sanction, the person to, within 30 days after the date on which the board's order becomes final fulfill certain conditions. Authorizes the board to forward the matter to the attorney general for enforcement if the person charged fails to pay the penalty in full as provided by Subsection (l) of this section or to timely comply with Subsection (m) of this section. Requires the judicial review of the order or decision of the board assessing the penalty to be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County. Requires the board to remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or execute a release of the bond if a supersedeas bond has been posted if a penalty is reduced or is not assessed by the reviewing court. Requires the accrued interest on amounts remitted by the board under this subsection to be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and to be paid for the period beginning on the date the penalty is paid to the board under Subsection (l) of this section and ending on the date the fine is remitted. Requires a penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund. Deletes provision that the

statement changing grounds for discipline must be filed with three copies; language providing for hearing procedures for a person whose certificate has been suspended; and providing for a person to appeal the decision of the board to a district court. Makes conforming and nonsubstantive changes.

SECTION 2.05. Amends Article 249c, V.T.C.S., by adding Section 8D, as follows:

Sec. 8D. SEAL. Requires each landscape architect to obtain and keep a seal with which the person shall stamp or impress each drawing or specification issued from the person's office for use in this state. Requires the board to prescribe the form of the seal. Requires the design of the seal to be the same as that used by the board, except that it shall bear the words "Registered Landscape Architect, State of Texas" instead of "Texas Board of Architectural Examiners." Prohibits a person from using or attempting to use a seal described by Subsection (b) of this section, a similar seal, or a replica of a seal described by Subsection (b) of this section unless the use is by and through a landscape architect. Prohibits a landscape architect from authorizing or permitting the use of the landscape architect's seal by an unregistered person without the landscape architect's personal supervision. Authorizes the board to cancel the registration certificate of a landscape architect who violates this subsection.

SECTION 2.06. Amends Section 9(a), Article 249c, V.T.C.S., to prohibit a person from representing the person to be a landscape architect without being registered or exempted from registering, presenting or attempting to use the certificate of registration or seal of another, giving any false or forged evidence, or violating any other provision of this article. Provides that a person who violates this section is subject to penalties provided by Section 8 of this article, rather than shall be fined not less than \$25 nor more than \$200. Requires each day of such violation to be a separate violation, rather than offense.

SECTION 2.07. Amends Section 10(b), Article 249c, V.T.C.S., to make a conforming change.

SECTION 2.08. Amends Article 249c, V.T.C.S., by adding Section 11, as follows:

Sec. 11. SUBPOENA. Authorizes the board to request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this article. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held if a person fails to comply with a subpoena issued under this section. Requires the court, if it determines that good cause exists for the issuance of the subpoena, to order compliance with the requirements of the subpoena. Authorizes the court to punish failure to obey the order of the court as contempt.

ARTICLE 3. REGULATION OF PRACTICE OF INTERIOR DESIGN

SECTION 3.01. Amends Section 5, Article 249e, V.T.C.S., by amending Subsection (d) and adding Subsection (h), to authorize the board to request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this article. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held, if a person fails to comply with a subpoena issued under this subsection. Requires the court, if it determines that good cause exists for the issuance of the subpoena, to order compliance with the requirements of the subpoena. Authorizes the court to punish failure to obey the order of the court as contempt. Makes conforming changes.

SECTION 3.02. Amends Section 6, Article 249e, V.T.C.S., by amending Subsections (a) and (b), and adding Subsection (d), to authorize the board to accept payment of a fee by electronic means. Authorizes the board to charge a fee for processing the payment by electronic means. Requires the board to set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment by electronic means, not to exceed five percent of the amount of the fee. Deletes fee limits. Makes conforming and nonsubstantive changes.

SECTION 3.03. Amends Sections 9(b), (c), and (d), Article 249e, V.T.C.S., to delete a provision that an applicant for admission to the registration examination may be accompanied by evidence of professional

education in interior design and has experience in the field of interior design. Makes conforming and nonsubstantive changes.

SECTION 3.04. Amends Sections 14(b), (c), and (e), Article 249e, V.T.C.S., to provide that the board may determine a penalty fee for renewal of an expired registration certificate. Authorizes a person to renew a registration certificate by submitting to the board satisfactory proof of compliance with continuing education requirements. Deletes text tying the additional fee for the renewing of expired registration certificate to the amount of the legislation examination fee. Makes conforming and nonsubstantive changes.

SECTION 3.05. Amends Article 249e, V.T.C.S., by adding Section 17 as follows:

Sec. 17. ADMINISTRATIVE PENALTY. Authorizes the board to assess an administrative penalty against a person on a certain ground. Authorizes the executive director to issue a report stating the facts on which the determination that a ground exists for a sanction is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty if, after investigation of the facts surrounding an allegation of a ground for a sanction the executive director determines that a ground exists for a sanction. Requires the executive director to base the recommended amount of the proposed penalty on the seriousness of the determined ground. Requires the seriousness of the ground to be determined by consideration of the factors prescribed by Subsection (g) of this section. Requires the executive director to give written notice of the report to the person charged not later than the 14th day after the date on which the report is issued. Requires the notice to include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of a ground for the penalty or on the amount of the penalty, or both the occurrence of the ground and the amount of the penalty. Authorizes the person charged to accept the determination of the executive director not later than the 20th day after the date on which the notice is received, including the recommended penalty, or make a request for a hearing on the determination. Requires the board to issue an order approving the determination and ordering the payment of the recommended penalty if the person charged accepts the determination of the executive director. Requires the board to set a hearing and give notice of the hearing if the person charged requests a hearing or fails timely to respond to the notice. Provides that all proceedings under this subsection relating to a person charged who holds a registration certificate issued by the board are subject to Chapter 2001, Government Code. Requires the board to make certain considerations in determining the amount of the penalty. Requires the executive director to give notice of the board's order to the person charged including certain specified information. Provides that the board's order becomes final, if the person charged holds a registration certificate, and on the 20th day after the order is rendered if the person does not hold a registration certificate. Requires the person charged with the penalty to pay the penalty in full unless the person has filed a petition for judicial review of the order. Requires the person to fulfill certain conditions, within 30 days after the date on which the board's order becomes final, if the person files a petition for judicial review contesting the amount of the penalty or the occurrence of the ground for sanction. Authorizes the board to forward the matter to the attorney general for enforcement if the person charged fails to pay the penalty in full or to timely comply with Subsection (j) of this section. Requires the judicial review of the order or decision of the board assessing the penalty to be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code. Requires the board to remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted if a penalty is reduced or is not assessed by the reviewing court. Requires the accrued interest on amounts remitted by the board under this subsection to be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and to be paid for the period beginning on the date the penalty is paid to the board under Subsection (i) of this section and ending on the date the fine is remitted. Requires a penalty collected under this section to be deposited to the credit of the general revenue fund.

ARTICLE 4. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 4.01. (a) Makes application of Section 7(c), Article 249a, V.T.C.S., prospective.

(b) Makes application of Section 5(a), Article 249a, V.T.C.S., prospective

(c) Makes application of Section 9(b)(1), Article 249a, V.T.C.S., prospective

SECTION 4.02. Effective date: September 1, 1999.

SECTION 4.03. Emergency clause.