

STORAGE NAME: h3523.grr

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3523

RELATING TO: Landscape Designers

SPONSOR(S): Representative Fuller and others

COMPANION BILL(S): SB 1066(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 3523 establishes a registration program for landscape designers to be administered by the Department of Agriculture and Consumer Services (DACS).

The bill provides that persons qualified to practice landscape design will be allowed to sell their planting designs. Presently, anyone who sells planting designs must be a licensed landscape architect. Current law stipulates that it is a first degree misdemeanor for a person to practice landscape architecture without a license.

The bill defines "landscape design" and provides that landscape designers must obtain a certificate of registration from DACS prior to providing landscape design services. The bill creates five alternative means to qualify for registration, consisting of education, experience, or a combination of education and experience. This regulation is added to existing regulation regarding nurseries, plant dealers, and stock brokers.

This legislation is a culmination of several years of controversy between landscape architects and landscape designers. Landscape design is essentially a "subset" of the activities encompassed by the landscape architecture profession.

DACS estimates that it will cost approximately \$105,000 in FY 1998-99 and \$36,000 in FY 1999-00 to implement this registration. DACS anticipates \$20,000 in revenues from the registration fee.

Representative Fuller has filed a substitute amendment to the bill with the Governmental Rules and Regulations Committee. The substitute amendment provides a definition of "landscape design" and authorizes landscape designers to provide such services without having to register with DACS or be licensed as a landscape architect.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

This bill is a culmination of several years of controversy and struggle between landscape architects and landscape designers. Landscape design is essentially a "subset" of the activities encompassed by the landscape architecture profession.

Section 481.303, F.S., defines landscape architecture as:

professional services, including, but not limited to, the following: consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Xeriscape..., where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;...the setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems....

According to information provided by the representatives of landscape designers, "a landscape designer is an individual who through education, training and professional experience engages for a fee in the consultation, planning, design or construction of exterior spaces, utilizing plant materials and incidental paving and building materials. Landscape Designers are trained in the professional service of plant placement and the placement of landscape amenities for home and business owners."

The following comparison illustrating the similarities and differences between the two professions was provided by the same sources:

Scale of Landscape Design

Selection and Placement of plant material in:

- Residential design
- Commercial Design
- Industrial Design
- Xeriscape
- Restoration Design
- Conceptual Placement of Hardscape

Scale of Landscape Architecture

- Residential Planning and Design
- Commercial Planning and Design
- Xeriscape Planning and Design
- Institutional Planning and Design
- Public Works and Design
- Public Works Projects

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- Highway Beautification
- Urban Planning
- Site Planning
- Community Planning
- Regional Planning
- Environmental Management and Planning
- Stormwater Management
- Surveying, Grading and Drainage Design
- Structural Design for Building Code Compliance
- Golf Course Planning and Design
- Parks and Recreational Facilities Planning and Design

Services of Landscape Design

Supporting consulting services including, but not limited to the following:

- Preparation of plan drawings, including planting design, maintenance programs, specifications and installation details, selection of soil amendments, mulches, edging, gravel and other similar materials.
- Maintenance and Management Programs
- Design of objects and features such as 6' fences, 18" walls, concrete or pavers on grade and other similar objects that do not require code compliance structural design.
- The recommended conceptual placement, but not the structural design, of other elements such as decks, drives, pools.

Services of Landscape Architecture

Supporting consulting services including, but not limited to the following:

- Preparation of plan drawings including planting design, management programs, specifications and installation details, selection of soil amendments, mulches, edging, gravel and other similar materials.
- Land Management Programs
- Design of objects and features that do or do not require code compliance structural design.
- The recommended placement and structural design of all elements, including these requiring code compliance.

Chapter 581, F.S., contains provisions regulating the plant industry in Florida. Every nurseryman, nursery stock dealer, plant broker, and agent must pay an annual certificate of registration fee, which shall expire 12 months following date of issue. There are no education, training, or experience requirements associated with this registration.

There are a variety of academic programs that qualify a person to perform as a landscape designer. Florida A&M University offers a 4-year degree in landscape design. Both Florida A&M University and the University of Florida have a 4-year degree program in environmental or ornamental horticulture. In addition, the following nine community colleges have a two year degree in either landscape technology or ornamental horticulture technology: Broward; Lake City; Miami-Dade; Central Florida; Hillsborough; Palm Beach; Pensacola; Santa Fe; and Valencia. Finally, there are 24 "technical centers" which offer a 1-year course of study.

B. EFFECT OF PROPOSED CHANGES:

This bill establishes a registration program for landscape designers, administered by the Department of Agriculture and Consumer Services (DACS). The practical effect of the bill is that persons who are qualified to practice landscape design will be allowed to sell their planting designs. Presently, anyone who sells planting designs who is not a landscape architect is committing unlicensed landscape architecture, which is a first degree misdemeanor.

A landscape designer, as defined in the bill, is a person who practices landscape design, and landscape design is defined as the "planning, design, or construction of exterior spaces, using plant materials and incidental paving and building materials," and includes consultation.

The bill establishes five alternative paths to qualify for registration, requiring education, experience of a combination of the two. This regulation is added to existing regulation regarding nurseries, plant dealers, and stock brokers.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The DACS is granted authority to make rules for the issuance and renewal of certification of registration and to charge fees.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. There will be a registration fee for landscape designers, not to exceed \$100.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Landscape designers will be charged a registration fee.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. It allows qualified persons to practice landscape design. Presently such persons are prohibited from selling their "planting designs."

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 581.011, 581.031, 581.035, 581.121, 581.131, 581.141, 581.211, and 481.329, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 581.011, F.S., defining landscape design and landscape designer, and adding landscape designers to the list of nurseries, stock dealers, agents, and plant brokers, who are required to obtain a certificate of registration from the Department of Agriculture and Consumer Services (DACs).

Section 2. Amends s. 581.031, F.S., establishing the authority to issue certificates of registration to landscape designers and charge fees for the issuance, renewal, and discipline of such, not to exceed \$100.

Section 3. Amends s. 581.035, F.S., adding "landscape designers" to existing provisions establishing the DACs's preemption of regulatory authority regarding regulation of nurseries.

Section 4. Amends s. 581.121, F.S., adding "landscape designers" to existing provisions relating to prohibitions toward selling or transferring nursery stock illegally.

Section 5. Amends s. 581.131, F.S., prohibiting a landscape designer from continuing to operate if the renewal fee has not been paid within 31 days of the renewal date; setting forth the minimum criteria for obtaining registration to include:

- (1) A bachelor's [4-yr] degree; or
- (2) An associate [2-yr] degree plus two years experience; or
- (3) A 1-yr technical center degree and 4 years experience; or
- (4) Six years experience; or
- (5) Certification by a "nationally recognized" organization in landscape design.

Provides that the registration or renewal fee shall not exceed \$100. Gives the department the authority to exempt from payment requirements those "governmental agencies whose landscape design services are provided exclusively for landscaping designs on their own property." This provision does not apply to architects, landscape architects, engineers, contractors for work on their own property; arborists; tree moving services; and lawn or landscape maintenance services.

Sections 6-7. Amend ss. 581.141 and 581.211, F.S., to include landscape designers in provisions authorizing the department to revoke, suspend, fine or otherwise discipline persons.

Section 8. Amends s. 481.329, F.S., establishing that the provisions of chapter 481, F.S., shall not be construed to prohibit landscape designers from providing landscape design services so long as the landscape designer does not use any of several designated terms and titles reserved for licensed landscape architects.

Section 9. Provides that the bill shall take effect October 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Department of Agriculture and
Consumer Services

<u>Expenses:</u>	FY 98-99	FY 99-00
Professional Pkg. 1 FTE		
Plant Industry TF	\$ 3,215	\$ -0-
AGMIC (data processing)		
General Inspection TF	\$ <u>67,000</u>	\$ -0-
Total PITF and GTF	\$ 70,215	\$ -0-

2. Recurring Effects:

Department of Agriculture and
Consumer Services

<u>Expenses:</u>		
1 FTE		
Plant Industry TF	\$ 24,472	\$ 25,206
Expenses		
Plant Industry TF	\$ 6,891	\$ 6,891
Non-operating costs	\$ 1,866	\$ 2,434
General Revenue Service Charge	\$ 1,460	\$ 1,460

Revenues:

Est. 200 registrants		
Plant Industry TF	\$ 20,000	\$ 20,000

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Department of Agriculture and
Consumer Services

Expenditures	\$ 104,904	\$ 35,991
Revenues	\$ 20,000	\$ 20,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Qualified persons who wish to practice landscape design will be allowed to sell their planting plans, but will have to pay an annual registration fee of up to \$100.

2. Direct Private Sector Benefits:

Qualified persons who wish to practice landscape design will be allowed to sell their planting plans. Presently, they are prohibited from doing so, unless they are licensed as a landscape architect.

3. Effects on Competition, Private Enterprise and Employment Markets:

Individuals, businesses, or government entities who wish to obtain planting plans will have a larger pool of suppliers of this service, which should result in a lower cost.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties of municipalities.

V. COMMENTS:

According to representatives of the Florida Chapter of the American Society of Landscape Architects, the language in the bill is "overbroad" and grants unlimited scope of practice to landscape designers. Landscape architects maintain that landscape designers have not demonstrated a proficiency in doing projects beyond single-family residential units. They further maintain that landscape designers are not trained or qualified to deal with construction materials or paving materials, only with plants and planting materials.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted a "strike everything after the enacting clause" amendment which abandoned the idea of a licensure program for landscape designers. Rather than establishing a licensure program, the amendment establishes an exemption from licensure in Part II of Chapter 481 (landscape architecture) for the activity of landscape design, *provided that the person operating under the exemption meets one of several qualification criteria set forth in the amendment.*

It may therefore best be described as an exemption conditioned on proving educational and/or experience qualifications.

A person wishing to operate under the exemption must obtain from the Department of Business and Professional Regulation a certification that he or she has qualified under one of the criteria paths, and must pay a one-time fee, not to exceed \$100 for the certificate. That certificate will not have to be renewed, and no regulatory controls will exist for persons who have obtained the certificate, so long as they limit themselves to the activities set forth in the definition of "landscape design."

Based on information provided by the industry, it is anticipated the approximately 200 persons may apply for this exemption. Because the department has only the responsibility to process the application -- and not subsequent regulatory responsibilities -- it is believed that the maximum fee of \$100 will be more than sufficient.

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VII. SIGNATURES:

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