

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/SB 1608

SPONSOR: Regulated Industries Committee, Senator Clary and others

SUBJECT: Architecture, Landscape Architecture, and Interior Design

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute adds limited liability companies to the list of business entities that need a certificate of authorization to practice architecture and interior design.

The committee substitute provides that registered architects, interior designers, and landscape architects may register approved seals electronically, and may transmit and seal documents electronically.

The committee substitute also revises the grounds for disciplinary action against registered architects and interior designers.

Finally, the committee substitute prohibits an architect, interior designer, or landscape architect from signing and sealing any document if their certificate of registration is expired, suspended, or revoked.

This committee substitute amends the following sections of the Florida Statutes: 481.219, 481.221, 481.225, 481.2251, 481.229, 481.321, and 481.325.

II. Present Situation:

Architecture, Interior Design, and Landscape Architecture

Section 481.219, F.S., requires certification of architecture and interior design partnerships and corporations. According to the Department of Business and Professional Regulation (DPBR), limited liability companies are also currently issued certificates of authorization to practice, even

though it is not specifically provided for in statute. DBPR points out that s. 481.219, F.S. was enacted in 1979 which was three years prior to the creation of limited liability companies in ch. 608, F.S.¹

Currently the Board of Architecture and Interior Design prescribes, by rule, distinctively different seals to be used by registered architects and interior designers. For architects, the seal is an impression-type seal and all final construction drawings, plans, specifications, or reports prepared or issued by the registered architect and being filed for public record must bear the signature and seal of the registered architect who prepared or approved the document and the date which they were sealed.² Interior designers must obtain a seal prescribed by the board and all drawings, plans, specifications, or reports prepared or issued by the registered interior designer and being filed for public record must bear the signature and seal of the registered interior designer who prepared or approved the document and the date on which they were sealed.

Section 481.221(4), F.S., prohibits an architect from affixing their signature or seal to any final construction document or instrument or service that includes drawings, plans, specifications, or architectural documents which were not prepared by them or under their responsible supervising control, or by another registered architect and reviewed, approved, or modified and adopted by them as their own work according to the board rules.

Section 481.225, F.S., provides for DBPR to take disciplinary action against licensed architects for the following acts:

- Violating any provision of ss. 455.227(1), 481.221, or 481.223, F.S., or any rule of the board or department lawfully adopted pursuant to this part or ch. 455, F.S.;
- Attempting to procure a license to practice architecture by bribery or fraudulent misrepresentations;
- Having a license to practice architecture revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country, for any act that would constitute a violation of this part or of ch. 455 F.S.;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of architecture or the ability to practice architecture;
- Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing; such reports or records include only those that are prepared in the capacity of a registered architect;
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content;

¹ Chapter 82-177, L.O.F.

² Rule 61G1-16.002, F.A.C.

- Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of architecture;
- Practicing on a revoked, suspended, inactive, or delinquent license;
- Aiding, assisting, procuring, or advising any unlicensed person to practice architecture contrary to this part or to a rule of the department or the board;
- Failing to perform any statutory or legal obligation placed upon a registered architect; and
- Attempting to influence or overrule the professional judgment of an architect by an act that, if carried out, would constitute negligence contrary to the exercise of professional judgment in accordance with professionally accepted standards of practice or would threaten the public health, safety, or welfare.

Section 481.225, F.S., provides for DBPR to take disciplinary action against registered interior designers for the following acts:

- Attempting to obtain, obtaining, or renewing, by bribery, by fraudulent misrepresentation, or through an error of the board, a license to practice interior design;
- Having a license to practice interior design revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction for any act which would constitute a violation of this part or of ch. 455, F.S.;
- Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the provision of interior design services or to the ability to provide interior design services. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges. However, the board shall allow the person being disciplined to present any evidence relevant to the underlying charges and the circumstances surrounding her or his plea;
- False, deceptive, or misleading advertising;
- Failing to report to the board any person who the licensee knows is in violation of this part or the rules of the board;
- Aiding, assisting, procuring, or advising any unlicensed person to use the title “interior designer” contrary to this part or to a rule of the board;
- Failing to perform any statutory or legal obligation placed upon a registered interior designer;
- Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a registered interior designer;
- Making deceptive, untrue, or fraudulent representations in the provision of interior design services;
- Accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent or licensed to perform;

- Violating any provision of this part, any rule of the board, or a lawful order of the board previously entered in a disciplinary hearing;
- Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising her or his services;
- Acceptance of compensation or any consideration by an interior designer from someone other than the client without full disclosure of the compensation or consideration amount or value to the client prior to the engagement for services, in violation of s. 481.2131(2), F.S.; or
- Rendering or offering to render architectural services.

When the Board of Architecture and Interior Design finds any person guilty, it may impose one or more of the following penalties:

- Refusal to approve an application for licensure;
- Refusal to renew an existing license;
- Revocation or suspension of a license;
- Imposition of an administrative fine; or
- Issuance of a reprimand.

Section 481.229(5)(a), F.S., provides that nothing contained in this part shall prevent a registered architect or a partnership or corporation holding a valid certificate of authorization to provide architectural services from performing any interior design service or from using the title “interior designer” or “registered interior designer.”

Section 481.321(1), F.S., provides that the Board of Landscape Architects may prescribe, by rule, a form of seal to be used by a registered landscape architect who holds a valid certificate of registration. Each registered landscape architect shall obtain an impression-type metal seal, and all plans, specifications, or reports prepared or issued by the registered landscape architect and filed for public record shall be signed by the registered landscape architect, dated, and stamped with her or his seal. The signature, date, and seal constitute evidence of the authenticity of that to which they are affixed.

Section 481.321(2), F.S., provides that when the certificate of registration of a registered landscape architect has been revoked or suspended by the board, the registered landscape architect shall surrender their seal to the executive director of the Board of Landscape Architects within 30 days after the revocation or suspension has become effective. If the certificate of the registered landscape architect is suspended, their seal shall be returned upon expiration of the suspension period.

Electronic Signature Act

The Electronic Signature Act of 1996, which includes ss. 668.001-668.006, F.S., was enacted as a means to (1) facilitate economic development and efficient delivery of government services by means of reliable electronic messages; (2) enhance public confidence in the use of electronic signatures; (3) minimize the incidence of forged electronic signatures and fraud in electronic

commerce; (4) foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to writings in any electronic medium; and assure that proper management oversight and accountability are maintained for agency-conducted electronic commerce.³ The act provides that electronic signatures have the same force and effect as a written signature and control processes and procedure shall be adopted by the head of each agency to ensure adequate integrity, security, confidentiality, and auditability of business transactions conducted using electronic commerce.⁴

III. Effect of Proposed Changes:

Section 1 amends s. 481.219, F.S., to add limited liability companies to the list of business entities that need a certificate of authorization to practice architecture and interior design. Currently, partnerships and corporations are required by statute to have certificates of authorization to practice architecture and interior design.

DBPR states that this provision will include, in law, the current practice of issuing certificates of authorization to limited liability companies for the practice of architecture and interior design.

Section 2 amends s. 481.221, F.S., to delete the requirement that registered architects must have “impression type” metal seals. This section provides that the Board of Architecture and Interior Design may prescribe by rule one or more forms of seals to be used by registered architects holding valid certificates of registration. This section provides that each registered architect obtain one seal approved by board rule and may register the approved seal electronically in accordance with ss. 668.001-668.006, F.S. Final plans, specifications, or reports prepared or issued by a registered architect may be transmitted electronically and may be signed by the registered architect, dated, and sealed electronically with the seal in accordance with the Electronic Signature Act of 1996, codified in ss. 668.001-668.006, F.S.

This section also provides that the Board of Architecture and Interior Design must adopt, by rule, distinctly different seals to be used by registered interior designers holding valid certificates of registration. Final plans, specifications, or reports prepared or issued by a registered interior designer may be transmitted electronically and may be signed by the registered interior designer, dated, and sealed electronically with the seal in accordance with the Electronic Signature Act.

This section also provides that an architect or interior designer may not sign and seal by any means any final plan, specification, or report after their certificate of registration is expired, suspended or revoked. This section requires the architect or interior designer to, within 30 days after the effective date of the suspension or revocation, surrender their seal to the executive director of the Board of Architecture and Interior Design and confirm in writing to the executive director the cancellation of the registered architect’s or interior designer’s electronic signature in accordance with the Electronic Signature Act (ss. 668.001-668.006, F.S.). When the registration is suspended, the seal shall be returned upon expiration of suspension.

³ Section 668.002, F.S.

⁴ Section 668.006, F.S.

Section 3 amends s. 481.225(1), F.S., relating to disciplinary action against registered architects. Currently, acts of fraud, negligence, incompetence, and misconduct are considered grounds for disciplinary action against registered architects. This section provides a list of actions that may be considered acts of fraud, incompetence, negligence, or misconduct, including, but not limited to, allowing the preparation of any architectural studies, plans, or other instruments of service in an office that does not have a full-time Florida-registered architect assigned to such office or failing to ensure the responsible supervising control of services or projects as required by the Board of Architecture and Interior Design.

Section 4 amends s. 481.2251(1), F.S., to provide that it is grounds for disciplinary action if a registered interior designer commits an act of fraud or deceit or of negligence, incompetency, or misconduct, in the practice of interior design, including, but not limited to, allowing the preparation of any interior design studies, plans, or other instruments of service in an office that does not have a full-time Florida-registered interior designer assigned to such office or failing to exercise responsible supervisory control over services or projects, as required by the Board of Architecture and Interior Design.

Section 5 amends s. 481.229, F.S., to make conforming changes to include limited liability companies in the list of business entities needing certificates.

Section 6 amends s. 481.321, F.S., to provide the Board of Landscape Architecture with the authority to prescribe, by rule, one or more forms of seal for use by a registered landscape architect. It deletes the requirement for an “impression type” metal seal. Each registered landscape architect must have one seal in a form approved by the Board of Landscape Architecture and may register the seal electronically in accordance with the laws governing electronic signatures.⁵ This section provides that final plans, specifications, or reports prepared or issued by a registered landscape architect may be transmitted and signed and sealed electronically.

This section also prohibits landscape architects from signing and sealing any final plan, specification, or report if the certificate of registration is expired, suspended, or revoked. Within 30 days of the effective date of the seal being expired, suspended, or revoked, the landscape architect must surrender the seal to the executive director of the Board of Landscape Architecture. A seal may be returned to the landscape architect at the end of a suspension.

Section 7 reenacts s. 481.325(1)(a), F.S., to incorporate the cross referenced changes in the committee substitute.

Section 8 provides this act will take effect upon becoming a law.

⁵ Sections 668.001-688.006, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

DBPR states that the changes made by this committee substitute will allow the efficient use of electronic sealing of documents that can be quickly transmitted to governmental agencies.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
