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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/15
SPONSOR Griego **LAST UPDATED** _____ **HB** _____

SHORT TITLE Architecture Practice Without License **SB** 549

ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Indeterminate		Nonrecurring	Board of Examiners for Architects

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$2.0	\$2.0	\$4.0	Recurring	Board of Examiners for Architects

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Board of Examiners for Architects (BEA)
 Regulation and Licensing Department (RLD)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 549 makes several changes to the Architectural Act. First, it adds a new subsection to the Architectural Act that gives the Board of Examiners for Architects authority to administratively prosecute, pursuant to the Uniform Licensing Act, an individual charged with unregistered practice of architecture, and to impose a civil penalty of up to \$25 thousand on such an individual.

The bill also another new subsection setting forth factors, such as, the seriousness of the violation, the economic benefit received by the violator from the violation, the violator's history, and other matters the board deems appropriate that the Board is to consider in assessing the amount of the civil penalty if it determines, after a disciplinary hearing, that unregistered practice occurred.

The bill adds language making an exception to the confidentiality of data acquired by the board relating to actual or potential disciplinary action, allowing it to be disclosed to the extent necessary to carry out the board's purpose or in a judicial appeal from a board action. The board may distribute or sell copies of the roster showing names and addresses of all registered architects to the national council of architectural registration boards as well as to the general public.

SB 549 also changes the registration requirements for architects from other jurisdictions. Relating respectively to those certified and not certified by the National Council of Architectural Registration Board (NCARB). In order to be certified by NCARB, candidates must take the architectural registration exam, which now requires knowledge of design for seismic forces, so it is no longer necessary for such knowledge to be made explicit in this subsection of our statute. SB 549 requires registered architects in other jurisdictions, certified by NCARB, to hold their registration in a position of authority for a period of time as prescribed by board rule.

New language added to Section 61-15-8(A)(2) clarifies that an architect performing services on a federally owned site where architectural services are performed only on that site are subject to federal jurisdiction and are exempt from registration under the Architectural Act.

FISCAL IMPLICATIONS

Revenue for the Board of Examiners for Architects Fund could increase because the bill allows the board to impose civil penalties up to \$25 thousand. These penalties go the board's fund but the number of individuals charged in the future with unregistered practice pursuant to the Architectural Act and amount of civil penalties imposed is unknown.

In FY 16, the board would need have a rules hearing, requiring an additional board meeting with per diem, travel by staff, and advertising at a cost of \$1,000. If a new avenue for the reciprocity of broadly experienced architects is approved under the statute change, a new process will need to be developed with new rules, and board members may meet in panels for interviews with the applicants. Additional per diem and travel is likely, for another \$1,000. In FY 17, the number of panels needed to interview broadly experienced architect applicants for reciprocity may increase and rules hearings may decrease.

SIGNIFICANT ISSUES

The Board of Examiners for Architects offer the following commentary:

BEA has had the authority under the Uniform Licensing Act to administratively prosecute unlicensed individuals who claim to be architects in New Mexico or offer architectural services. However, in recent years, it has been pointed out to BEA that the Architectural Act should be more explicit regarding that authority.

The amendment proposed in the bill regarding reciprocal registration have been under intense discussion for the past two years as the BEA views its work of licensing individuals as foundational to its mandate to protect the health and safety of the public. Initially, the discussion focused on reciprocal registration requirements for “broadly experienced architects” as there has been a focused effort nationally, regionally and locally by the American Institute of Architects and the BEA to review the rigorous requirements placed on the certification of broadly experienced architects by the (NCARB) A NCARB certificate shows that an individual has met the standards in education, intern development, passage of the Architectural Registration Exam and is currently licensed elsewhere in good standing.

The Attorney General’s Office offers the following commentary:

As the Act presently exists, it does not contain a provision for a civil penalty for unregistered practice, although pursuant to the Uniform Licensing Act’s (ULA’s) general provision contained in Section 61-1-3.2 NMSA 1978, the board may impose a civil penalty of up to \$1,000.00 for such activity. There are other occupations or professions regulated under the ULA whose acts give their boards authority to impose civil penalties greater than the general provision contained in the ULA. For instance, the Board of Licensure for Professional Engineers and Professional Surveyors is authorized to impose civil penalties of up to \$7,500.00 for the unlicensed practice of engineering Section 61-23-23.1 NMSA 1978 or surveying Section 61-23-27.15 NMSA 1978, and the factors it is to consider in determining the amount of the penalty are the same as those SB 549 would require the Board of Examiners for Architects to consider.

TECHNICAL ISSUES

According to AGO:

The language “to the extent necessary to carry out the board’s purpose” in the proposed change to Section 61-15-5(D) NMSA 1978 is broad and ambiguous. Rather than the phrase “judicial appeal,” the Legislature might want to consider “appeal pursuant to Section 61-1-17” or “appeal to the district court.” It appears implicit already that such information would be able to be disclosed in an appeal from a Board action, or else an appeal to the district court pursuant to Section 61-1-17 of the ULA would be impossible.

CE/je/bb/aml