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SENATE BILL 327

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO ARCHITECTURE; REAUTHORIZING AND AMENDING THE
ARCHITECTURAL ACT; PROVIDING FOR PENALTIES FOR VIOLATIONS OF
THE ARCHITECTURAL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-15-4 NMSA 1978 (being Laws 1931,
Chapter 155, Section 3, as amended) is amended to read:

"61-15-4. POWERS AND DUTIES OF THE BOARD.--

A. The board shall hold at least four regular
meetings each year. Any board member failing to attend three
consecutive regular meetings is automatically removed as a
member of the board. A majority of the board members
constitutes a quorum.

B. A board member may participate in a meeting of
the board by means of a conference telephone or other similar

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1 communications equipment when it is otherwise difficult or
2 impossible for the member to attend the meeting in person if:

3 (1) each member participating by conference
4 telephone can be identified when speaking;

5 (2) all participants are able to hear each
6 other at the same time; and

7 (3) members of the public attending the
8 meeting are able to hear all board members who speak during the
9 hearing.

10 C. The board may establish committees to carry out
11 the provisions of the Architectural Act. The board or any
12 committee ~~[thereof]~~ of the board shall have the power to
13 subpoena any witness, to administer oaths and to take testimony
14 concerning matters within its jurisdiction. It is within the
15 jurisdiction of the board to determine and prescribe by
16 ~~[regulations]~~ rules the professional and technical
17 qualifications necessary for the practice of architecture in
18 New Mexico. The board shall adopt and have an official seal,
19 which shall be affixed to all certificates of registration
20 granted, and may make rules not inconsistent with law.

21 D. The board may offer, engage in and promote
22 educational and other activities as it deems necessary to
23 fulfill its duty to promote the public welfare.

24 E. The board may, for the purpose of protecting the
25 citizens of New Mexico and promoting current architectural

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1 knowledge and practice, adopt rules establishing continuing
2 education requirements as a condition of registration renewal.

3 F. Members of the board shall receive per diem and
4 mileage as provided in the Per Diem and Mileage Act and shall
5 receive no other compensation, perquisite or allowance. All
6 expenses certified by the board as properly and necessarily
7 incurred in the discharge of its duties, including authorized
8 reimbursement and necessary expenses incident to cooperation
9 with like boards of other states, shall be paid by the state
10 treasurer out of the "fund of the board of examiners for
11 architects" on the warrant of the secretary of finance and
12 administration issued upon vouchers signed by the chair or the
13 chair's designee; provided, however, that at no time shall the
14 total warrants issued exceed the total amount of funds
15 accumulated under the Architectural Act. All money derived
16 from the operation of the Architectural Act shall be deposited
17 with the state treasurer, who shall keep the money in the fund
18 of the board of examiners for architects.

19 G. The board shall by rule provide for the
20 examinations required for registration. The board shall keep a
21 complete record of all examinations.

22 H. Upon application for registration, upon a
23 prescribed form and upon payment by the applicant of a fee set
24 by the board, the board shall consider the application and, in
25 cases as herein authorized, shall issue a certificate of

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1 registration as an architect to any person who submits evidence
2 satisfactory to the board that the person is fully qualified to
3 practice architecture.

4 I. It is the duty of the board to report to the
5 district attorney of the district where the offense was
6 committed any criminal violation of the Architectural Act.

7 J. The board may deny, review, suspend or revoke a
8 registration to practice architecture and may censure, fine,
9 reprimand and place on probation and stipulation any architect
10 in accordance with the Uniform Licensing Act for any cause as
11 stated in the Architectural Act.

12 K. The board, in cooperation with the state board
13 of [~~registration~~] licensure for professional engineers and
14 [~~land~~] professional surveyors and the board of landscape
15 architects, shall create a joint standing committee to be known
16 as the "joint practice committee". In order to safeguard life,
17 health and property and to promote public welfare, the purpose
18 of the committee is to promote and develop the highest
19 professional standards in design, planning and construction and
20 the resolution of ambiguities concerning the professions. The
21 composition of the committee and its duties and powers shall be
22 in accordance with identical resolutions adopted by each board.

23 L. Pursuant to the notice and hearing requirements
24 of the Uniform Licensing Act, the board may impose a civil
25 penalty in an amount not to exceed seven thousand five hundred

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1 dollars (\$7,500) for each violation on any individual found to
2 be engaging in the practice of architecture without being
3 registered pursuant to the Architectural Act."

4 SECTION 2. Section 61-15-5 NMSA 1978 (being Laws 1931,
5 Chapter 155, Section 4, as amended) is amended to read:

6 "61-15-5. ADDITIONAL DUTIES OF THE BOARD.--

7 A. The board shall keep a record of its
8 proceedings. The records of the board shall be prima facie
9 evidence of the proceedings of the board set forth in the
10 record and a transcript of the record, duly certified by the
11 board under seal, shall be admissible in evidence with the same
12 force and effect as if the original were produced.

13 B. The board shall keep a register of all
14 applications for registration, which shall show the name, age
15 and residence of each applicant, the date of application, the
16 applicant's place of business, the applicant's educational and
17 other qualifications, whether an examination was required,
18 whether the applicant was rejected, whether a certificate of
19 registration was granted, the date of the action of the board
20 and any other information deemed necessary by the board.

21 C. Annually, the board shall submit to the governor
22 a report of its transactions of the preceding year accompanied
23 by a complete statement of the receipts and expenditures of the
24 board. The report shall be available to the public.

25 D. Board records and papers [~~which~~] that are of a

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1 confidential nature and are not public records include
2 examination material for examinations not yet given, file
3 records of examination problem solutions, letters of inquiry
4 and references concerning applicants, board inquiry forms
5 concerning applicants and investigation files. All data,
6 communications and information acquired by the board relating
7 to actual or potential disciplinary action is confidential and
8 shall not be disclosed except to the extent necessary to
9 fulfill the duties of the board.

10 E. A roster showing the names and addresses of all
11 registered architects shall be prepared annually by the board
12 and shall be made available to each registered architect and
13 placed on file with the secretary of state. Copies of the
14 roster may be distributed or sold to the public.

15 F. The board shall, by rule, set application,
16 registration, renewal, examination and other fees.

17 G. The board may, by rule, set criteria for the
18 training of intern architects."

19 SECTION 3. Section 61-15-6 NMSA 1978 (being Laws 1931,
20 Chapter 155, Section 5, as amended) is amended to read:

21 "61-15-6. REQUIREMENTS FOR REGISTRATION.--

22 A. To be eligible for registration, a person shall
23 be of good character and repute.

24 B. An applicant for registration shall submit
25 evidence satisfactory to the board that the applicant is fully

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1 qualified to practice architecture in New Mexico.

2 C. All applicants for registration shall be
3 required to pass any examinations required by the board.

4 D. All applicants for registration shall be
5 required to complete all forms and affidavits required by the
6 board.

7 E. An applicant for registration by examination
8 shall have:

9 (1) a professional degree from an
10 architectural program accredited by the national architectural
11 accreditation board or its equivalent as prescribed by rule;

12 (2) certified completion of the [~~intern~~
13 ~~training~~] architectural experience program of the national
14 council of architectural registration boards; and

15 (3) passed all divisions of the architectural
16 registration examination.

17 F. A person registered as an architect in another
18 jurisdiction who has been certified by the national council of
19 architectural registration boards may apply for registration
20 without an examination by presenting for review by the board:

21 (1) a certificate of good standing issued by
22 the national council of architectural registration boards or
23 its equivalent as prescribed by rule; [~~and~~]

24 (2) evidence satisfactory to the board of
25 qualification in comprehensive design [~~for seismic forces~~] as

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1 prescribed by rule of the board; and

2 (3) evidence satisfactory to the board of
3 meeting all of the requirements prescribed by rule of the
4 board.

5 G. A person registered as an architect in another
6 jurisdiction who has held the registration in a position of
7 responsibility for [~~at least five years~~] a period of time as
8 prescribed by the rule of the board and who does not have a
9 certificate issued by the national council of architectural
10 registration boards may apply for registration by presenting
11 evidence of broad experience as an architect, as required by
12 rule of the board, of academic training and work experience
13 directly related to architecture, including evidence
14 satisfactory to the board of qualification in comprehensive
15 design.

16 H. No sole proprietorship, partnership,
17 corporation, association or other business entity shall be
18 registered under the Architectural Act. No sole
19 proprietorship, partnership, corporation, association or other
20 business entity shall practice or offer to practice
21 architecture in the state except as provided in Subsections I,
22 J and K of this section.

23 I. Registered architects may practice under the
24 Architectural Act as individuals or through partnerships,
25 associations, corporations or other business entities.

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1 J. In the case of practice through a [~~partnership~~]
2 business entity primarily offering architectural services, at
3 least one of the [~~partners~~] owners shall be a registered
4 architect under the Architectural Act, and registered
5 architects shall hold a majority ownership interest in the
6 business entity. All plans, designs, drawings, specifications
7 or reports issued by or for the [~~partnership~~] business entity
8 for a project physically located within New Mexico shall bear
9 the seal of a registered architect who shall be responsible for
10 such work.

11 K. In the case of practice through a business
12 entity [~~services or work involving the practice of architecture~~
13 ~~may be offered through the business entity; provided the~~
14 ~~registered architect in responsible charge of the activities of~~
15 ~~the business entity involved in such practice is an employee of~~
16 ~~the business entity with the authority to bind the entity by~~
17 ~~contract. All plans, designs, drawings, specifications or~~
18 ~~reports that are involved in the practice and issued by or for~~
19 ~~the business entity shall bear the seal and signature of a~~
20 ~~registered architect in responsible charge of the work when~~
21 ~~issued. The architect in responsible charge of activities of~~
22 ~~the business entity offering architectural services shall~~
23 ~~provide the board with an affidavit documenting the authority~~
24 ~~and shall notify the board of a termination of the authority]~~
25 primarily offering engineering services, registrants under the

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1 Architectural Act or licensees under the Engineering and
2 Surveying Practice Act may offer architectural services;
3 provided that:

4 (1) an architect registered in New Mexico is
5 in responsible charge of the architectural services of the
6 business entity and has the authority to bind the entity by
7 contract;

8 (2) the architect in responsible charge
9 provides the board with an affidavit documenting the
10 architect's authority;

11 (3) all plans, designs, drawings,
12 specifications or reports that are involved in the practice and
13 issued by or for the business shall bear the seal and signature
14 of the architect in responsible charge of the work when issued;
15 and

16 (4) the architect shall notify the board of a
17 termination of the architect's authority.

18 L. A business entity that offers project delivery
19 through a teaming of architectural and construction services
20 may render architectural services only with an architect in
21 responsible charge who is registered in New Mexico. This
22 provision does not apply to business entities providing
23 services that are exempted by Section 61-15-9 NMSA 1978."

24 SECTION 4. Section 61-15-8 NMSA 1978 (being Laws 1931,
25 Chapter 155, Section 7, as amended by Laws 1999, Chapter 263,

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1 Section 6 and by Laws 1999, Chapter 272, Section 28) is amended
2 to read:

3 "61-15-8. EXEMPTIONS--FROM REGISTRATION.--

4 A. The following are exempt from the provisions of
5 the Architectural Act:

6 (1) architects who have no established places
7 of business in this state and who are not registered [~~under~~
8 pursuant to the Architectural Act may act as consulting
9 associates of an architect registered under the provisions of
10 the Architectural Act; provided that the architects are
11 registered as architects in another jurisdiction; and

12 (2) architects acting solely as officers or
13 employees of the United States or any interstate railroad
14 system or architects acting on a federally owned site where
15 architectural services are performed only on that site and are
16 subject to federal jurisdiction.

17 B. Nothing in the Architectural Act shall prevent a
18 registered architect from employing non-registrants to work
19 under the architect's responsible charge."

20 SECTION 5. Section 61-15-9 NMSA 1978 (being Laws 1931,
21 Chapter 155, Section 8, as amended by Laws 1999, Chapter 263,
22 Section 7 and by Laws 1999, Chapter 272, Section 29) is amended
23 to read:

24 "61-15-9. PROJECT EXEMPTIONS.--

25 A. The state and its political subdivisions are not

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1 exempt from the requirements of the Architectural Act.

2 B. A person who is not an architect may prepare
3 building plans and specifications, unless the building plans
4 and specifications involve public safety or health, but the
5 work shall be done only on:

6 (1) single-family dwellings not more than two
7 stories in height;

8 (2) multiple dwellings not more than two
9 stories in height containing not more than four dwelling units
10 of wood-frame construction; provided that this paragraph shall
11 not be construed to allow a person who is not registered under
12 the Architectural Act to design multiple clusters of up to four
13 dwelling units each to form apartment or condominium complexes
14 where the total exceeds four dwelling units on any lawfully
15 divided lot;

16 (3) garages or other structures not more than
17 two stories in height [~~which~~] that are appurtenant to buildings
18 described in Paragraphs (1) and (2) of this subsection; or

19 (4) nonresidential buildings, as defined in
20 [~~the uniform~~] applicable state or local building [code] codes,
21 unless the building code official having jurisdiction has found
22 that the submission of plans, drawings, specifications or
23 calculations prepared and designed by an architect or engineer
24 licensed by the state is necessary to obtain compliance with
25 minimum standards governing the preparation of building plans

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1 and specifications adopted by the construction industries
2 division of the regulation and licensing department. The
3 construction industries division shall set, by [~~regulation~~]
4 rule, minimum standards for preparation of building plans and
5 specifications pursuant to this paragraph.

6 C. Nothing in the Architectural Act shall require
7 the state or a political subdivision of the state to secure the
8 services of an architect or engineer for a public work project
9 that consists of repair, replacement or remodeling if the
10 alteration does not affect structural or life safety features
11 of a building and does not require the issuance of a building
12 permit under any applicable code.

13 D. A New Mexico registered professional engineer
14 who has complied with all the laws of New Mexico relating to
15 the practice of engineering has a right to engage in the
16 incidental practice, as defined by rule, of activities properly
17 classified as architectural services; provided that the
18 engineer does not [~~hold himself out to be~~] make any
19 representation as being an architect or as performing
20 architectural services; and further provided that the engineer
21 performs only that part of the work for which the engineer is
22 professionally qualified and uses qualified professional
23 engineers, architects or others for those portions of the work
24 in which the contracting professional engineer is not
25 qualified. The engineer shall assume all responsibility for

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1 compliance with all laws, codes, rules and ordinances of the
2 state or its political subdivisions pertaining to documents
3 bearing an engineer's professional seal."

4 SECTION 6. Section 61-15-10 NMSA 1978 (being Laws 1979,
5 Chapter 362, Section 8, as amended) is amended to read:

6 "61-15-10. VIOLATIONS--PENALTIES.--

7 A. Any person who knowingly uses a forged
8 architectural registration seal on any document for the
9 [purposes] purpose of permitting the constructing of any
10 building for human habitation or occupancy is guilty of a
11 fourth degree felony, punishable pursuant to Section 31-18-15
12 NMSA 1978.

13 B. Each of the following acts committed by any
14 person constitutes a misdemeanor, punishable pursuant to
15 Section 31-19-1 NMSA 1978:

16 (1) willfully forging or giving false evidence
17 of any kind to the board or any board member for the purpose of
18 obtaining a certificate of registration as an architect;

19 (2) using or attempting to use an expired,
20 suspended or revoked certificate of registration as an
21 architect;

22 (3) using or permitting another to use [~~his~~]
23 the person's official architect's seal to stamp or seal any
24 documents that have not been prepared either by the architect
25 or the architect's responsible charge;

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1 (4) engaging or offering to engage in the
2 practice of architecture, unless exempted or duly registered to
3 do so under the Architectural Act;

4 (5) using ~~any~~ a designation tending to imply
5 to the public that the person is an architect unless:

6 (a) the person is duly registered to do
7 so under the provisions of the Architectural Act;

8 (b) the title containing the designation
9 is allowed by rule of the board; or

10 (c) the title containing the designation
11 does not imply that the person using the designation, when
12 describing occupation, business name or services, is offering
13 to perform architectural services; or

14 (6) procuring, aiding or abetting any
15 violation of the provisions of the Architectural Act or the
16 rules adopted by the board.

17 C. If, after a disciplinary hearing, the board
18 determines that, based on the evidence, a person committed a
19 violation pursuant to the Architectural Act, the board, in
20 addition to any other sanction, shall issue an order that
21 imposes a civil penalty not to exceed seven thousand five
22 hundred dollars (\$7,500) for each violation on the person. In
23 determining the amount of the civil penalty, the board shall
24 consider:

25 (1) the seriousness of the violation;

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- 1 (2) the degree of harm inflicted on
- 2 individuals or the public;
- 3 (3) the economic benefit received by the
- 4 person due to the violation;
- 5 (4) the person's history of violations; and
- 6 (5) any other aggravating or mitigating
- 7 factors relating to the violation."

8 SECTION 7. Section 61-15-12 NMSA 1978 (being Laws 1979,
9 Chapter 362, Section 9, as amended) is amended to read:

10 "61-15-12. DISCIPLINARY ACTIONS.--

11 A. In accordance with the provisions of the Uniform
12 Licensing Act, the board may refuse to issue, may suspend or
13 may revoke any certificate of registration as an architect, and
14 the board may impose disciplinary conditions, including a
15 letter of censure or reprimand, [~~an administrative~~] a civil
16 penalty pursuant to Section 61-15-10 NMSA 1978, probation, peer
17 review, remedial education and testing and other conditions as
18 deemed necessary by the board to promote the public welfare,
19 upon satisfactory proof being made to the board that the
20 registrant has:

- 21 (1) engaged in any fraud or deceit in
- 22 obtaining a certificate of registration;
- 23 (2) made a false statement under oath or a
- 24 false affidavit to the board;
- 25 (3) engaged in gross negligence, incompetency

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1 or misconduct in the practice of architecture as set forth by
2 rule;

3 (4) stamped with [~~his~~] the registrant's
4 official seal any plans, specifications, plats or reports in
5 violation of the Architectural Act;

6 (5) practiced architecture without a valid and
7 current registration in the jurisdiction in which the practice
8 took place;

9 (6) [~~represented himself to be~~] made any
10 representation as being an architect without having a valid and
11 current certificate of registration as an architect in the
12 jurisdiction in which the representation took place;

13 (7) violated any provisions of the
14 Architectural Act or the rules adopted by the board;

15 (8) refused to accept or to respond to a
16 certified mail communication from the board;

17 (9) failed to provide the board or its
18 representatives in a timely manner all documentation or
19 information in the registrant's possession or knowledge that
20 has been requested by the board for the purposes of
21 investigation of an alleged violation of the Architectural Act
22 or the rules adopted by the board;

23 (10) procured, aided or abetted a violation of
24 the Architectural Act or the rules adopted by the board;

25 (11) failed to comply with the minimum

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1 standards of the practice of architecture;

2 (12) habitually or excessively used
3 intoxicants or controlled substances; or

4 (13) failed to report to the board any adverse
5 actions taken against the registrant by another jurisdiction,
6 any professional organization, any governmental or law
7 enforcement agency or any court for an act or conduct that
8 would constitute grounds for actions as provided by this
9 section.

10 B. The board may deny access to examination, may
11 refuse to issue, may suspend or may revoke any certificate of
12 registration as an architect:

13 (1) for any applicant found to have violated
14 any provision of the Architectural Act or the rules adopted by
15 the board; or

16 (2) for any registrant or applicant who is
17 convicted of a felony.

18 C. Disciplinary proceedings may be instituted by
19 any person, shall be instituted by sworn complaint and shall
20 conform to the provisions of the Uniform Licensing Act. Any
21 party to a hearing may obtain a copy of the hearing record upon
22 payment of the costs for the copy.

23 D. The board may modify any prior order of
24 revocation, suspension or refusal to issue a certificate of
25 registration of an architect, but only upon a finding by the

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1 board that there no longer exist any grounds for disciplinary
2 action; provided, however, that any cessation of the practice
3 of architecture for twelve months or more shall require the
4 architect to undergo such additional examination as the board
5 determines necessary.

6 E. Nothing in the Architectural Act shall be
7 construed as requiring the board to report, for the institution
8 of proceedings, minor violations of that act; provided that the
9 board, after an informal hearing, determines that the public
10 interest will be adequately served by a suitable written notice
11 or warning or by the suspension of the offender's license or
12 certificate of registration for a period not to exceed thirty
13 days.

14 F. The applicant or registrant shall be liable for
15 all costs of disciplinary proceedings unless exonerated and
16 shall be liable for all costs associated with monitoring
17 compliance with any disciplinary action."

18 SECTION 8. Section 61-15-13 NMSA 1978 (being Laws 1979,
19 Chapter 362, Section 10, as amended) is amended to read:

20 "61-15-13. TERMINATION OF AGENCY LIFE--DELAYED
21 REPEAL.--The board of examiners for architects is terminated on
22 July 1, [~~2017~~] 2023 pursuant to the provisions of the Sunset
23 Act. The board shall continue to operate according to the
24 provisions of the Architectural Act until July 1, [~~2018~~] 2024.
25 Effective July 1, [~~2018~~] 2024, the Architectural Act is

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