

1 SENATE BILL 549

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO ARCHITECTURE; AMENDING SECTIONS OF THE
12 ARCHITECTURAL ACT; IMPOSING CIVIL PENALTIES FOR PRACTICING
13 ARCHITECTURE WITHOUT A CERTIFICATE OF REGISTRATION.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "61-15-4. POWERS AND DUTIES OF THE BOARD.--

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

24 B. A board member may participate in a meeting of
25 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 pursuant to the Uniform Licensing Act
13 may administratively prosecute an individual charged with
14 unregistered practice pursuant to the Architectural Act. The
15 board may impose a civil penalty in an amount not to exceed
16 twenty-five thousand dollars (\$25,000) on an individual who
17 without a valid certificate of registration engages in the
18 practice of architecture.

19 [~~K-~~] L. The board, in cooperation with the state
20 board of [~~registration~~] licensure for professional engineers
21 and [~~land~~] professional surveyors and the board of landscape
22 architects, shall create a joint standing committee to be known
23 as the "joint practice committee". In order to safeguard life,
24 health and property and to promote public welfare, the purpose
25 of the committee is to promote and develop the highest

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1 professional standards in design, planning and construction and
2 the resolution of ambiguities concerning the professions. The
3 composition of the committee and its duties and powers shall be
4 in accordance with identical resolutions adopted by each
5 board."

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

8 "61-15-5. ADDITIONAL DUTIES OF THE BOARD.--

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

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

23 C. Annually, the board shall submit to the governor
24 a report of its transactions of the preceding year accompanied
25 by a complete statement of the receipts and expenditures of the

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1 board. The report shall be available to the public.

2 D. Board records and papers [~~which~~] that are of a
3 confidential nature and are not public records include
4 examination material for examinations not yet given, file
5 records of examination problem solutions, letters of inquiry
6 and references concerning applicants, board inquiry forms
7 concerning applicants and investigation files. All data,
8 communications and information acquired by the board relating
9 to actual or potential disciplinary action is confidential and
10 shall not be disclosed except to the extent necessary to carry
11 out the board's purpose or in a judicial appeal from a board
12 action.

13 E. A roster showing the names and addresses of all
14 registered architects shall be prepared annually by the board
15 and shall be made available to each registered architect and
16 placed on file with the secretary of state. Copies of the
17 roster may be distributed or sold to the public or to the
18 national council of architectural registration boards.

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

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

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

25 "61-15-6. REQUIREMENTS FOR REGISTRATION.--

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

3 B. An applicant for registration shall submit
4 evidence satisfactory to the board that the applicant is fully
5 qualified to practice architecture in New Mexico.

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

8 D. All applicants for registration shall be
9 required to complete all forms and affidavits required by the
10 board.

11 E. An applicant for registration by examination
12 shall have:

13 (1) a professional degree from an
14 architectural program accredited by the national architectural
15 [~~accreditation~~] accrediting board or its equivalent as
16 prescribed by rule;

17 (2) certified completion of the intern
18 training program of the national council of architectural
19 registration boards; and

20 (3) passed all divisions of the architectural
21 registration examination.

22 F. A person registered as an architect in another
23 jurisdiction who has been certified by the national council of
24 architectural registration boards may apply for registration
25 without an examination by presenting for review, which the

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1 board shall act upon:

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

5 (2) evidence satisfactory to the board of
6 qualification in comprehensive design ~~[for seismic forces]~~ as
7 prescribed by rule of the board; and

8 (3) evidence satisfactory to the board of
9 meeting all other requirements as may be prescribed by rule of
10 the board.

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

22 H. No sole proprietorship, partnership,
23 corporation, association or other business entity shall be
24 registered under the Architectural Act. No sole
25 proprietorship, partnership, corporation, association or other

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1 business entity shall practice or offer to practice
2 architecture in the state except as provided in Subsections I,
3 J and K of this section.

4 I. Registered architects may practice under the
5 Architectural Act as individuals or through partnerships,
6 associations, corporations or other business entities.

7 J. In the case of practice through a partnership
8 offering architectural services, at least one of the partners
9 shall be a registered architect under the Architectural Act,
10 and all plans, designs, drawings, specifications or reports
11 issued by or for the partnership shall bear the seal of a
12 registered architect who shall be responsible for such work.

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

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1 and shall notify the board of a termination of the authority."

2 SECTION 4. Section 61-15-8 NMSA 1978 (being Laws 1931,
3 Chapter 155, Section 7, as amended by Laws 1999, Chapter 263,
4 Section 6 and by Laws 1999, Chapter 272, Section 28) is amended
5 to read:

6 "61-15-8. EXEMPTIONS--FROM REGISTRATION.--

7 A. The following are exempt from the provisions of
8 the Architectural Act:

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

15 (2) architects acting solely as officers or
16 employees of the United States [~~or~~], any interstate railroad
17 system or a federally owned site where architectural services
18 are performed only on that site and are subject to federal
19 jurisdiction.

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

23 SECTION 5. Section 61-15-9 NMSA 1978 (being Laws 1931,
24 Chapter 155, Section 8, as amended by Laws 1999, Chapter 263,
25 Section 7 and by Laws 1999, Chapter 272, Section 29) is amended

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1 to read:

2 "61-15-9. PROJECT EXEMPTIONS.--

3 A. The state and its political subdivisions are not
4 exempt from the requirements of the Architectural Act.

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

9 (1) single-family dwellings not more than two
10 stories in height;

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

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

22 (4) nonresidential buildings, as defined in
23 the [~~uniform~~] New Mexico building code adopted by the
24 construction industries division of the regulation and
25 licensing department, unless the building code official having

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1 jurisdiction has found that the submission of plans, drawings,
2 specifications or calculations prepared and designed by an
3 architect or engineer licensed by the state is necessary to
4 obtain compliance with minimum standards governing the
5 preparation of building plans and specifications adopted by the
6 construction industries division [~~of the regulation and~~
7 ~~licensing department~~]. The construction industries division
8 shall set, by [~~regulation~~] rule, minimum standards for
9 preparation of building plans and specifications pursuant to
10 this paragraph.

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

18 D. A New Mexico registered professional engineer
19 who has complied with all the laws of New Mexico relating to
20 the practice of engineering has a right to engage in the
21 incidental practice, as defined by rule, of activities properly
22 classified as architectural services; provided that the
23 engineer does not [~~hold himself out to be~~] make any
24 representation as being an architect or as performing
25 architectural services; and further provided that the engineer

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1 performs only that part of the work for which the engineer is
2 professionally qualified and uses qualified professional
3 engineers, architects or others for those portions of the work
4 in which the contracting professional engineer is not
5 qualified. The engineer shall assume all responsibility for
6 compliance with all laws, codes, rules and ordinances of the
7 state or its political subdivisions pertaining to documents
8 bearing an engineer's professional seal."

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

11 "61-15-10. VIOLATIONS--CIVIL PENALTIES--CRIMINAL
12 CHARGES.--

13 A. If after a disciplinary hearing the board
14 determines that based on the evidence a registered or
15 unregistered person committed a violation pursuant to the
16 Architectural Act, the board, in addition to any other
17 sanction, shall issue an order that imposes a civil penalty not
18 to exceed twenty-five thousand dollars (\$25,000) per violation
19 on the violator. In determining the amount of the civil
20 penalty, the board shall consider:

21 (1) the seriousness of the violation;

22 (2) the economic benefit received by the
23 violator due to the violation;

24 (3) the violator's history of violations; and

25 (4) other matters the board deems appropriate.

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1 B. Any person who knowingly uses a forged
2 architectural registration seal on any document for the
3 [~~purposes~~] purpose of permitting the constructing of any
4 building for human habitation or occupancy is guilty of a
5 fourth degree felony, punishable pursuant to Section 31-18-15
6 NMSA 1978.

7 ~~[B.]~~ C. Each of the following acts committed by any
8 person constitutes a misdemeanor, punishable pursuant to
9 Section 31-19-1 NMSA 1978:

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

13 (2) using or attempting to use an expired,
14 suspended or revoked certificate of registration as an
15 architect;

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

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

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

25 (a) the person is duly registered to do

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1 so under the provisions of the Architectural Act;

2 (b) the title containing the designation
3 is allowed by rule of the board; or

4 (c) the title containing the designation
5 does not imply that the person using the designation, when
6 describing occupation, business name or services, is offering
7 to perform architectural services; or

8 (6) procuring, aiding or abetting any
9 violation of the provisions of the Architectural Act or the
10 rules adopted by the board."

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

13 "61-15-12. DISCIPLINARY ACTIONS.--

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

24 (1) engaged in any fraud or deceit in
25 obtaining a certificate of registration;

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1 (2) made a false statement under oath or a
2 false affidavit to the board;

3 (3) engaged in gross negligence, incompetency
4 or misconduct in the practice of architecture as set forth by
5 rule;

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

9 (5) practiced architecture without a valid and
10 current registration in the jurisdiction in which the practice
11 took place;

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

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

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

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

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

3 (11) failed to comply with the minimum
4 standards of the practice of architecture;

5 (12) habitually or excessively used
6 intoxicants or controlled substances; or

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

13 B. The board may deny access to examination, may
14 refuse to issue, may suspend or may revoke any certificate of
15 registration as an architect:

16 (1) for any applicant found to have violated
17 any provision of the Architectural Act or the rules adopted by
18 the board; or

19 (2) for any registrant or applicant who is
20 convicted of a felony.

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

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1 D. The board may modify any prior order of
2 revocation, suspension or refusal to issue a certificate of
3 registration of an architect, but only upon a finding by the
4 board that there no longer exist any grounds for disciplinary
5 action; provided, however, that any cessation of the practice
6 of architecture for twelve months or more shall require the
7 architect to undergo such additional examination as the board
8 determines necessary.

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

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

21 **SECTION 8. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2015.