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SB-608 Architects and landscape architects. (2019-2020)

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Senate Bill No. 608

CHAPTER 376

An act to amend Sections 144, 5510, 5517, 5520, 5536, 5536.22, 5552.5, 5600.05, 5616, 5620, 5621, and 5622, of, and to add Sections 5526.5, 5552.1, and 5620.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 27, 2019. Filed with Secretary of State September 27, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 608, Glazer. Architects and landscape architects.

(1) Existing law regulating professions and vocations requires certain designated agencies, within the purview of the Department of Consumer Affairs, to require applicants to furnish their fingerprints for purposes of conducting criminal history record checks.

This bill would, beginning on January 1, 2021, add the California Architects Board and the Landscape Architects Technical Committee to the list of designated agencies subject to these provisions. The bill would also provide that beginning on January 1, 2021, the California Architects Board has the authority to obtain and review criminal offender record information to determine whether an applicant is subject to denial of a license. The bill would require, as a condition of the application for a license or reinstatement thereof, that each applicant furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history check and undergoing a state and federal level criminal offender record information search. The bill would require an applicant to certify under penalty of perjury that the applicant's fingerprints have been furnished to the Department of Justice in compliance with this provision and to pay the reasonable regulatory costs for furnishing the fingerprints and conducting the searches. By expanding the crime of perjury, the bill would impose a state-mandated local program.

(2) Existing law, the Architects Practice Act, establishes the California Architects Board consisting of 10 members and sets forth its powers and duties over the licensure and regulation of architects. The act permits the board to appoint a person who is exempt from civil service as its executive officer to exercise duties delegated to the officer by the board. Existing law transfers duties previously within the jurisdiction of the California State Board of Landscape Architects to the California Architects Board. Existing law also creates a Landscape Architects Technical Committee within the jurisdiction of the board and authorizes the committee to assist the board in examining candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of the act. Existing law repeals these provisions on January 1, 2020.

This bill would extend the operation of these provisions until January 1, 2024. The bill would also confer specified powers of the board to its executive officer, or, in the executive officer's absence, to the acting executive officer. These powers would include receiving and filing accusations, issuing notices of hearings, and conducting various other duties in connection with the board's administrative hearing duties. The bill would additionally delegate to the executive officer the board's power to evaluate and determine qualifications and approve applicants for examination and determine eligibility for applicants for reciprocity licenses to waive the written examination.

This bill would also make nonsubstantive changes to those provisions related to the renaming of the “State Board of Architectural Examiners” to the “California Architects Board.”

(3) Existing law authorizes boards within the Department of Consumer Affairs, to establish, by regulation, a system for issuing a citation to a licensee in accordance with certain provisions. Under existing law, the system is required to contain, among other elements, information provided to the licensee that if they desire a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 days of the date of issuance of the citation or assessment.

This bill would authorize a cited person subject to the Architects Practice Act, in addition to requesting an administrative hearing as described above, to request an informal conference to review the acts charged in the citation, in accordance with certain procedural requirements and timeframes.

(4) Under existing law, an architect is required to use a written contract when contracting to provide professional services, as specified. Existing law requires that the contract include, among other things, a description of services to be provided and a description of the procedure to be used to accommodate additional services.

This bill would require the written contract to also include a description of the project, a description of the procedure that will be used to accommodate additional services and contract changes, the project address, a statement identifying the ownership and use of instruments of service prepared by the architect, and a statement notifying the client that the architect is licensed and regulated by the board located at a specified address. The bill would provide that the written contract requirement does not apply to professional services rendered to a public agency when using that agency’s written contract.

(5) Existing law requires a landscape architect to use a written contract when contracting to provide professional services. Existing law requires that the contract include, among other things, a description of services to be provided, a description of the procedure to be used to accommodate additional services, and a notice that landscape architects are licensed by the State of California.

This bill would require the written contract to also include a description of the project for which the client is seeking services, a description of the procedure that the landscape architect and the client will use to accommodate contract changes, a statement identifying the ownership and use of instruments of service prepared, and a statement notifying the client that the landscape architect is licensed by the Landscape Architects Technical Committee located at a specified address. The bill would revise and recast related provisions governing written contracts for landscape architects. The bill would provide that the written contract requirement does not apply to professional services rendered to a public agency when using that agency’s written contract.

(6) Existing law makes it a misdemeanor for a person to advertise or represent that they are a “registered building designer” or registered or otherwise licensed by the state as a building designer.

This bill would delete the above misdemeanor penalty provision prohibiting a person from advertising or representing that they are a “registered building designer” or registered or otherwise licensed by the state as a building designer.

(7) Existing law requires a person licensed to practice architecture to complete, as a condition of license renewal, a specified amount of coursework regarding disability access requirements that depends on the date of renewal. Existing law requires a licensee to comply with specified recordkeeping requirements to that effect.

This bill would revise and recast those requirements to, among other changes, require a licensee to complete 5 hours of coursework that meets certain requirements, and would require the board to promulgate regulations to establish qualifications for courses and course providers by January 1, 2023. The bill would also make a licensee who provides false or misleading information as it relates to completion of coursework requirements subject to an administrative citation or disciplinary action by the board and would make specified changes to the recordkeeping requirements.

(8) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Bureau of Cannabis Control.
- (28) California Board of Podiatric Medicine.
- (29) Osteopathic Medical Board of California.
- (30) California Architects Board, beginning January 1, 2021.
- (31) Landscape Architects Technical Committee, beginning January 1, 2021.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall remain in effect only until January 1, 2024, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 5517 of the Business and Professions Code is amended to read:

5517. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in the executive officer by this chapter.

This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 5520 of the Business and Professions Code is amended to read:

5520. The board shall adopt a seal for its own use. The seal used shall have the words, "California Architects Board" inscribed thereon.

The executive officer shall have the care and custody of the seal.

SEC. 5. Section 5526.5 is added to the Business and Professions Code, to read:

5526.5. (a) In addition to requesting an administrative hearing as provided for in paragraph (4) of subdivision (b) of Section 125.9, the cited person may request an informal conference to review the acts shared in the citation. The cited person shall make the request for an informal conference in writing, within 30 days of the date of issuance of the citation, to the executive officer.

(b) The executive officer or their designee shall hold, within 60 days from the receipt of the request, an informal conference with the cited person. The executive officer or their designee may extend the 60-day period for good cause.

(c) Following the informal conference, the executive officer or their designee may affirm, modify, or dismiss the citation, including any fine that is levied, order of abatement, or order of correction issued. The executive officer or their designee shall state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference.

(d) If the citation, including any fine that is levied or order of abatement or correction, is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing, which shall be conducted as provided for in paragraph (4) of subdivision (b) of Section 125.9.

(e) A cited person shall not request an informal conference for a citation which has been affirmed or modified following an informal conference.

SEC. 6. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that the person is an architect, is qualified to engage in the practice of architecture, or is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person who is not licensed to practice architecture under this chapter to affix a stamp or seal that bears the legend "State of California" or words or symbols that represent or imply that the person is so licensed by the state to prepare plans, specifications, or instruments of service.

SEC. 7. Section 5536.22 of the Business and Professions Code is amended to read:

5536.22. (a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or the client's representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of the project for which the client is seeking services.
- (2) A description of the services to be provided by the architect to the client.
- (3) A description of any basis of compensation applicable to the contract and the method of payment agreed upon by both parties.
- (4) The name, address, and license number of the architect, the name and address of the client, and the project address.
- (5) A description of the procedure that the architect and the client will use to accommodate additional services and contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation and method of payment.
- (6) A description of the procedure to be used by either party to terminate the contract.
- (7) A statement identifying the ownership and use of instruments of service prepared by the architect.
- (8) A statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834."

(b) This section shall not apply to any of the following:

- (1) Professional services rendered by an architect for which the client will not pay compensation.
- (2) An arrangement as to the basis for compensation and manner of providing professional services implied by the fact that the architect's services are of the same general kind which the architect has previously rendered to and received payment from the same client.
- (3) If the client knowingly states in writing after full disclosure of this section that a writing which complies with the requirements of this section is not required.
- (4) Professional services rendered by an architect to a professional engineer registered to practice engineering under Chapter 7 (commencing with Section 6700), or to a land surveyor licensed under Chapter 15 (commencing with Section 8700).
- (5) Professional services rendered by an architect to a public agency when using that public agency's written contract.

SEC. 8. Section 5552.1 is added to the Business and Professions Code, to read:

5552.1. (a) Pursuant to Section 144, beginning January 1, 2021, the board has the authority to obtain and receive criminal history information. The information obtained as a result of the fingerprinting shall be used in accordance with Section 11105 of the Penal Code and to determine whether the applicant is subject to denial of a license pursuant to Division 1.5 (commencing with Section 475) or Sections 5560 and 5577.

(b) As a condition of application for a license, each applicant shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

(c) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105 of the Penal Code.

(d) The applicant shall pay for the reasonable regulatory costs for furnishing the fingerprints and conducting the searches.

(e) The applicant shall certify, under penalty of perjury, when applying for a license whether the applicant's fingerprints have been furnished to the Department of Justice in compliance with this section.

(f) Failure to comply with the requirements of this section renders the application for a license incomplete, and the application shall not be considered until the applicant demonstrates compliance with all of the requirements of this section.

(g) Notwithstanding any other law, the results of any criminal offender record information request by either state or federal law enforcement authorities shall not be released by the board except in accordance with state and federal requirements.

(h) This section shall apply to all applicants subject to this chapter and subdivision (i).

(i) As used in this section, the term “applicant” shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

(j) As a condition of petitioning the board for reinstatement of a revoked or surrendered license, an applicant shall comply with subdivision (a).

SEC. 9. Section 5552.5 of the Business and Professions Code is amended to read:

5552.5. The board may, by regulation, implement an architectural education and training experience or internship program.

SEC. 10. Section 5600.05 of the Business and Professions Code is amended to read:

5600.05. (a) (1) As a condition of license renewal, a licensee shall complete five hours of coursework pursuant to paragraph (2).

(2) Coursework regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this paragraph shall be presented by trainers or educators with knowledge and expertise in these requirements. The board shall promulgate regulations to establish qualifications for courses and course providers by January 1, 2023.

(b) The board may audit the records of a licensee to verify the completion of the coursework requirements of subdivision (a). A licensee shall maintain records of completion of the required coursework for two years from the date of license renewal, containing the following information: course title, subjects covered, name of provider and trainer or educator, date of completion, number of hours completed, and a statement about the trainer’s or educator’s knowledge and experience background. A licensee shall make those records available to the board for auditing upon request. A licensee who provides false or misleading information as it relates specifically to the requirements of this subdivision shall be subject to an administrative citation, which may include an administrative fine pursuant to Section 125.9, or to disciplinary action by the board.

(c) The board shall audit at least 3 percent of the license renewals received each year to verify the completion of the continuing education requirements of this subdivision.

(d) A continuing education provider may submit evidence of coursework to the board directly.

SEC. 11. Section 5616 of the Business and Professions Code is amended to read:

5616. (a) A landscape architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the landscape architect and the client, or their representatives, prior to the landscape architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the project for which the client is seeking services.

(2) A description of the services to be provided by the landscape architect to the client.

(3) A description of any basis of compensation applicable to the contract, including the total price that is required to complete the contract, and the method of payment agreed upon by both parties.

(4) A statement in at least 12-point type that reads:

“Landscape architects are licensed by the Landscape Architects Technical Committee located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834.”

(5) The name, address, and license number of the landscape architect, the name and address of the client, and project address.

(6) A description of the procedure that the landscape architect and client will use to accommodate additional services.

(7) A description of the procedure to be used by either party to terminate the contract.

(8) A description of the procedure that the landscape architect and the client will use to accommodate contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation, total price, and method of payment.

(9) A statement identifying the ownership and use of instruments of service prepared by the landscape architect.

(b) This section shall not apply to any of the following:

- (1) Professional services rendered by a landscape architect for which the client will not pay compensation.
- (2) An arrangement as to the basis for compensation and manner of providing professional services implied by the fact that the landscape architect's services are of the same general kind that the landscape architect has previously rendered to, and received payment for from, the same client.
- (3) If the client states in writing after full disclosure of this section that a written contract is not required.
- (4) Professional services rendered by a landscape architect to any of the following:
 - (A) A landscape architect licensed under this chapter.
 - (B) An architect licensed under Chapter 3 (commencing with Section 5500).
 - (C) A professional engineer licensed under Chapter 7 (commencing with Section 6700).
 - (D) A contractor licensed under Chapter 9 (commencing with Section 7000).
 - (E) A geologist or geophysicist licensed under Chapter 12.5 (commencing with Section 7800).
 - (F) A professional land surveyor licensed under Chapter 15 (commencing with Section 8700).
 - (G) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with, or incidental to, the products, systems, or services of that corporation or its affiliates.
 - (H) A public agency when using that public agency's written contract.

(c) As used in this section, "written contract" includes a contract that is in electronic form.

SEC. 12. Section 5620 of the Business and Professions Code is amended to read:

5620. The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Architects Board. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Architects Board shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Architects Board as defined in Article 2 (commencing with Section 5510) of Chapter 3 of Division 3.

Whenever in this chapter "board" is used, it refers to the California Architects Board.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architects Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 13. Section 5620.2 is added to the Business and Professions Code, to read:

5620.2. (a) The following powers conferred by law upon the board are hereby delegated to and conferred upon the executive officer, or in their absence from the office, to the acting executive officer, as provided below:

- (1) Receive and file accusations.
- (2) Issue notices of hearings, statements to respondents, and statements of issues.
- (3) Receive and file notices of defense.

(4) Determine the time and place of hearings under Section 11508 of the Government Code.

(5) Issue subpoenas and subpoenas duces tecum.

(6) Set calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the board in connection with proceedings under Sections 11500 to 11528, inclusive, of the Government Code, before hearing those proceedings.

(7) Approve settlement agreements for the revocation or surrender of a license.

(8) Certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code.

(b) In addition to the powers described in subdivision (a), the following powers are also delegated to and conferred upon the executive officer, as provided below:

(1) Evaluate and determine qualifications and approve applicants for examination under Section 5650.

(2) Determine which applicants for reciprocity licenses are entitled to waiver of the written examination under Section 5651.

SEC. 14. Section 5621 of the Business and Professions Code is amended to read:

5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.

(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of the member's successor or until one year shall have elapsed, whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 15. Section 5622 of the Business and Professions Code is amended to read:

5622. (a) The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architects committee may perform duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 16. The Legislature finds and declares that Section 8 of this act, which adds Section 5552.1 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and personal information of applicants, it is necessary that applicant record information be kept confidential.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.