House
Legislative
Analysis
Section

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INTERIOR DESIGN: DEFINE

House Bill 4535 as enrolled
Public Act 250 of 1998
Sponsor: Rep. Michael J. Griffin

House Committee: Regulatory Affairs
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Second Analysis (8-5-98)

THE APPARENT PROBLEM:

Architects are generally associated with the design and construction of buildings, and interior designers with the design layout of the interior of a building to meet a client's functional need. Where many of the design practices of the two professions are clearly distinct, there exist some overlapping areas. For instance, both architects and certain interior designers are trained in selecting finishes for a large commercial property that would meet building codes, designing the interior partitioning to meet the functional needs of a business (reception area, offices, and so on), drawing the reflected ceiling plans, and drawing the outlet location plan. Interior designers maintain that many in their profession are more than qualified to engage in the design practices that overlap with those of architects. According to information supplied by the Coalition for Interior Design Registration, there are about 200,000 practicing interior designers in the United States, with about 3,000 in Michigan. Interior designers generate about $40 billion a year in business, which is slightly more than one percent of the gross national product. Twenty U.S. jurisdictions have enacted interior design legislation requiring licensure. Passage of the National Council for Interior Design Qualification (NCIDQ) examination, a six-section exam that includes a drafting component and tests an applicant's knowledge in such things as building codes and barrier-free design laws, problem solving skills, and determining a client's need as to space and function, is a prerequisite for membership in all of the interior design professional organizations and a component of licensure in those states that license interior designers.

Currently, under Michigan law, architects are licensed under the Occupational Code, but interior designers are not regulated. Public Act 400 of 1994 amended the code to specify that nothing in the Occupational Code would apply to a person engaging in or practicing interior design or several other occupations such as plumbers and electricians. Depending on the extent of a building or renovation project, plans and drawings submitted to local building inspectors must have an architect's seal in order to be approved for a building permit, and plans, specifications, and estimates of certain public works must be prepared by licensed architects. According to staff at the Department of Consumer and Industry Services, design plans that primarily deal with the interior layout of a building, such as those plans that do not affect a building's mechanical or structural systems, do not need an architect's seal in order to be approved for a building permit. Reportedly, however, because of the overlap of certain design practices between architects and interior designers, some building inspectors have often interpreted the code as always requiring plans drawn by interior designers to have an architect's seal. Some believe that the economic downturn in construction in the 1980s and early 1990s led to increased pressure on building inspectors by architects to stick to the letter of the law and not approve plans that did not carry an architect's seal. Since that time, interior designers in the state have been subjected to several restraint of trade lawsuits and have been denied building permits. In lieu of licensing interior designers in the state, some believe that the concerns of both interior designers and architects can be met by clarifying that qualified interior designers (those who have passed an NCIDQ exam) performing specific design services would not have to have an architect's

seal for certain design plans in order to obtain building permits.

THE CONTENT OF THE BILL:

The bill would amend Article 6 of the Occupational Code, entitled "Violations and Penalties", to allow a trained interior designer to perform specified design functions under certain circumstances. The bill would allow a person trained in the design of interior spaces (not to be confused with an interior decorator) to perform services in connection with the design of interior spaces including preparation of documents related to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building's mechanical, structural, electrical, or fire safety systems. The bill would define "interior designer" as a person engaged in the activities previously described and who met one or more of the following:

--Beginning on the bill's enactment date, had proof of passing the complete 1997 National Council For Interior Design Qualification (NCIDQ) examination. The bill would adopt the examination and the qualifications to sit for the examination by reference. (Any subsequent update or revision of the NCIDQ examination could be adopted by reference by the Department of Consumer and Industry Services [DCIS] by rule promulgated by the director).

--As of the bill's enactment, had been engaged in the activities of an interior designer and had previously passed any complete NCIDQ examination.

--Demonstrated to an advisory subcommittee on interior design (for a period of up to one year after the establishment of the subcommittee) that he or she had been engaged in the activities specified in the bill and had met the educational and experience requirements that would have conferred eligibility to sit for the 1997 or other NCIDQ exam. (Note: To sit for the exam, a person must have a combination of education and experience totaling six years; e.g. a four-year degree and two years experience, a three-year degree and three years experience, or six years of experience.)

The bill would create an advisory subcommittee on interior design to verify qualifications of those interior designers who had not passed an NCIDQ exam but who were seeking qualification for performing those design services specified in the bill on the basis of education and experience, and to recommend the qualifications of those interior designers to perform the services described in the bill. The subcommittee would consist of not more than five members selected by the department. Two members would have to be licensed architects and the rest would be interior designers. The department would have to assure that the advisory subcommittee would be fully functional not later than six months after the bill's enactment, and would be disbanded after having reviewed the last application by those interior designers seeking qualification based on education and experience. Further, the advisory subcommittee would have to compile a list of all individuals considered qualified to perform the specified services. The list would have to be given to the Board of Architects for review and consideration, and the board would have at least 90 days after receiving the list before individuals would have to be approved. A person whose qualifications were not approved could appeal the determination to the director of DCIS or his or her designee. The list of those interior designers considered to be qualified to perform the specified design services would have to be made electronically available to the state or any municipality that issued permits under the state Construction Code Act (MCL 125.1501 et al.).

The director could promulgate rules to administer the bill, including rules to establish a fee charged to those individuals seeking verification of their qualifications and for procedures for adding and removing individuals from the list of qualified interior designers. Under the bill, an interior designer would have a rectangular, nonembossed stamp with his or her name, business address, the title "interior designer", and the certificate number issued by the National Council for Interior Design Qualification (NCIDQ), if applicable. Use of the stamp would have to be in conjunction with the designer's signature.

The bill would take effect on October 1, 1998.

MCL 339.601 and 339.601a

BACKGROUND INFORMATION:

Currently, Article 20 of the Occupational Code (MCL 339.2001 to 339.2014), entitled "Architects, Professional Engineers, and Land Surveyors", requires licensees to obtain a seal authorized by the appropriate board that has the licensee's name and the legend indicating either "licensed architect", "licensed professional engineer", or "licensed land surveyor". Certain documents, such as plans, plats, drawings, maps, and the title sheet of specifications prepared by a licensee and submitted to a governmental agency for approval or for filing as a public record must carry the embossed or printed seal of the person "in responsible charge". Submitting such documents to a public official or municipality for approval, a permit, or a

plan for filing as a public record without having the proper seal or seals subjects a person to penalties under the code. Further, governmental agencies are prohibited from engaging in the construction of a public work costing over $15,000 involving architecture or professional engineering unless certain requirements are met, including having the plans and specifications and estimates prepared by a licensed architect or licensed professional engineer, and the materials used reviewed by and completed phases of construction made under the direct supervision of a licensed architect or licensed professional engineer.

Public Act 400 of 1994 amended Article 6 of the Occupational Code (MCL 339.601), entitled "Violations and Penalties", to specify that nothing in the code would apply to a person engaging in or practicing the following: interior design; building design; any activity for which the person is licensed under Public Act 266 of 1929 (the act regulating plumbers); any activity for which the person was licensed under the Forbes Mechanical Contractors Act; or any activity for which the person was licensed under the Electrical Administrative Act. The act's provisions raised a question as to whether a person engaged in any of these five professions could also practice any of the occupations regulated under the code without having to be licensed for that profession. For example, some interpreted the act as allowing an interior designer to also practice mortuary science or cosmetology without a mortician's or cosmetologist's license. To address this issue, the attorney general issued an opinion (OAG No. 6864 - 1994) in which he stated that Public Act 400 exempted persons in those occupations only "when they are 'engaging in or practicing' one of five listed occupations." Therefore, if a person from one of the listed occupations also engaged in conduct that fell within the scope of practice of any of the professions or occupations for which a license was required under the code, the person would also have to be licensed for that occupation.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, an increased cost could be associated with the bill's provision for the Department of Consumer and Industry Services to promulgate administrative rules to enforce the bill's provisions, including the imposition of fees on individuals wishing to qualify to perform the specified services. If such fees were set, the bill could increase state revenue. The HFA also reports that administration of the bill's reporting provisions (the list of qualified interior designers) would likely lead to a small increase in state costs. (7-8-98)

ARGUMENTS:

For:

The bill represents a carefully brokered agreement between architects and interior designers that was about 12 years in the making. By limiting the performance of specified design functions under the Occupational Code to those designers who have passed the National Council for Interior Design Qualification (NCIDQ) examination, the public health, welfare, and safety would continue to be protected by identifying the proper credentials for performing the design functions, and the two professions could continue their respective design practices. It is important to remember that for over two decades, interior designers freely engaged in certain design practices that did not substantially affect building structure or fire safety systems. It has only been more recently that the letter of the law has been more rigorously enforced and interior designers have been denied building permits if the plans lacked an architect's seal. This means that a designer must then submit his or her plans to an architect for review, and then the architect must redraw the designs according to the architect's specifications. Since those interior designers with NCIDQ certification are very knowledgeable, the architect's interpretation of the design is often verbatim to the interior designer's plans. This practice results in increased costs to the client, who in effect is paying to have the same design plans drawn twice.

The NCIDQ exam process is a very stringent, one-and-a-half-day long exam that tests an applicant in six sections in such things as identification and application, problem solving, building and barrier-free codes, determining a client's need as to function of space, a three-dimensional exercise to test application of theories, and a drafting portion. To qualify to offer the design services specified in the bill, an interior designer would have to successfully complete an entire NCIDQ exam. Though the bill would allow some designers to substitute education and experience in lieu of passing the NCIDQ exam, the "grandfather" provision would be available for only about a year and a designer would have to be recommended by an advisory subcommittee created in the Department of Consumer and Industry Services and be approved by the Board of Architects. Further, the department would be responsible for making a list of those interior

designers approved to perform the design services available to state and local building inspectors, so that a quick verification of a designer's credentials could be done.

In addition, the bill would provide protection to the public by exempting only those projects that would not affect a building's mechanical, structural, electrical, or fire safety systems. Those projects that would result in an effect on building systems would still have to have an architect's seal in order be approved for building permits. According to industry representatives, as part of the educational requirements and NCIDQ examination preparations, interior designers are well-schooled to recognize what they are and are not capable and qualified to do. Requiring an interior designer to submit a drawing to an architect for his or her review and seal only when a building system would be affected would protect the public, and yet would lower costs when a project would result in only a minor change.

Against:

It would appear that interior designers are seeking statutory recognition and a better way to go about that would be through a title bill. As it stands, the bill would allow interior designers (who are not licensed or registered, or subject to penalties under the Occupational Code) to engage in certain design functions that architects must be licensed to do. On the other hand, where some people acknowledge that setting minimum standards for people who do design work, as the bill would do, is a step in the right direction, there is concern that the bill's standard regarding whether a component of construction would "affect" a building's mechanical, structural, electrical or fire safety systems would be so narrow as to defeat the expressed purpose of the bill, which was to help

clarify those design plans that had changes too minor to require an architect's seal. As written, however, the bill could be interpreted as requiring almost all plans prepared by interior designers to have an architect's seal, as almost any job could be argued to affect a building's mechanical, structural, electrical, or fire safety systems. For example, placement of cubicle partitions could be argued to affect the ingress or egress which in turn could affect the exit route in case of emergencies, or the placement of wall plugs could be argued to affect the electrical design systems, and so forth.

Response:

Though it is true that interior designers would not be subject to regulation under the Occupational Code, an interior designer is still liable for negligence as any business person would be. Also, though Public Act 400 of 1994 exempted interior designers from regulation under the Occupational Code, a 1995 Attorney General Opinion (number 6864) found that a person engaging in interior design would have to have a license as required by the code if he or she also practiced any of the professions or occupations for which a license is required under the code. The AG's opinion further states that the exemption under Section 601 (6) "only protects persons when they are 'engaging in or practicing'" interior design or one of the other four listed occupations, but if the person engaged in conduct that fell within the scope of practice of a regulated profession or occupation, then he or she would be subject to regulation and penalties under the code. In light of the attorney general opinion, the bill would be extremely helpful by adding a definition of the scope of practice for interior design. Under the bill, it would be clear that interior designers offering services related to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions would not be subject to regulation under the code unless the design affected the building's mechanical, structural, electrical, or fire safety systems, and would clearly distinguish those interior designers having the education and experience to properly perform such design work.

As to the concern that the word "affect" may be so narrowly interpreted that all plans drawn by interior designers might be required by building officials to have an architect's seal, perhaps only time can tell if the language may need additional refining. Since building inspectors are certified through the Bureau of Construction Codes and need continuing education credits to keep their certification current, there may

exist mechanisms by which those in the industry can educate building officials as to proper application of the bill's provisions. Those experts in the field should be given a chance to address the issue administratively rather than automatically taking a legislative approach to try to find the "right" way to define what would constitute "affecting" the building systems.

For:

Unlike a title bill, the bill would not restrict entry into the profession of interior design. It would, however, clarify that the drawing of plans for projects that did not affect a building's mechanical, structural, electrical, or fire safety systems would be within the scope of practice of those interior designers meeting the educational and experience standard prescribed in the bill. Interior designers who did not meet the qualifications in the bill could still engage in the practice of interior design, but would have to have an architect's seal on plans submitted for building permits.

Against:

The bill does not address what happens to an interior designer's stamp if his or her name is removed from the list of qualified interior designers.

Response:

The bill specifies that the director of DCIS may promulgate rules to administer the act which include, but are not limited to, setting a fee for individuals seeking qualification and procedures for removing individuals from the list of qualified designers. The director would therefore be able to establish a procedure by which a designer's stamp would have to be surrendered in the event his or her name was removed from the list of qualified designers.

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.