HOUSE BILL NO. 1330
with Senate Amendments

HOUSE BILL NO. 1330

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

Representatives Keiser, Ekstrom, Thoreson

Senators Grindberg, Klein, Triplett

A BILL for an Act to amend and reenact sections 43-03-01, 43-03-02, 43-03-03, 43-03-04, 43-03-05, 43-03-06, 43-03-08, 43-03-09, 43-03-10, 43-03-11, 43-03-13, 43-03-14, 43-03-15, 43-03-16, 43-03-17, 43-03-18, 43-03-19, 43-03-20, and 43-03-22 of the North Dakota Century Code, relating to the regulation of architects and landscape architects; to repeal sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code, relating to the regulation of architects and landscape architects; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-03-01 of the North Dakota Century Code is amended and reenacted as follows:

43-03-01. Definitions. In this chapter, unless the context ~~or the subject matter~~ otherwise requires:

1. "Architect" means an individual who is registered as an architect under this chapter.
2. "Board" means the state board of architecture <u>and landscape architecture</u>.
3. "Landscape architect" means an individual who ~~practices~~ <u>is registered as a</u> landscape ~~architecture~~ <u>architect under this chapter</u>.
4. "Landscape architecture" does not include the practice of engineering and practice of professional engineering as defined under section 43-19.1-02.
<u>5. "Practice of architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge and skill are required in connection with the erection, enlargement, or alteration of</u>

any building, or the equipment, or utilities thereof, or the accessories thereto if the safeguarding of the public health, safety, or welfare is concerned or involved. The term includes the making of architectural plans and specifications for buildings.

6. "Practice of landscape architecture" means rendering or offering to render service to clients generally, including any one or any combination of the following practices or professional services: advice, consultation, planning, landscape architectural design, drawings, and specifications; and general administration of the contract as the owner's representative during the construction phase in which expert knowledge and skill are required in connection with landscape enhancement or landscape development, including the formulation of graphic or written criteria to govern the planning or design of land construction projects, production of overall site plans, landscape grading, and landscape drainage plans, planting plans, irrigation plans, and construction details if the safeguarding of the public health, safety, or welfare is concerned or involved.

SECTION 2. AMENDMENT. Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

43-03-02. Persons exempt from regulations.

1. The architect registration provisions of this chapter do not apply to ~~a person making plans and specifications for a building to be constructed by or for that person; a~~:

   a. A person supervising the erection, enlargement, or alteration of a building ~~being constructed by or for that person; a person preparing for a school board plans and specifications for, or supervising the erection or alteration of, one-room or two-room school buildings costing not to exceed five thousand dollars; or an employee of an architect acting under that architect's instruction, control, and supervision in preparing plans and specifications for the erection, enlargement, or alteration of buildings.~~; or

   b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:

      (1) A private residence;

(2) A building that under applicable building code is not designed for occupancy by ten or more individuals, does not exceed two stories in height exclusive of a one-story basement, and is:

(a) A garage;

(b) A commercial or industrial building;

(c) An office building;

(d) A preengineered metal building;

(e) A building for the marketing, storage, or processing of farm products;

(f) A warehouse; or

(g) Rental apartment units;

(3) A farm building; or

(4) A nonstructural alteration of any nature to any building if the alteration does not affect the safety of the occupants of the building.

2. The landscape architect registration provisions of this chapter do not apply to:

a. An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;

b. A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare; or

c. An individual in the course of planning or otherwise caring for that individual's property.

3. This chapter does not:

a. Apply to an officer or employee of the United States government while engaged in governmental work in this state;

b. Curtail or extend the right of any other profession regulated in this state;

c. Prevent the independent employment of a registered professional engineer for any professional service related solely to civil, structural, mechanical, or electrical engineering in connection with any building or building project; or

d. Supersede, override, or amend the provisions of chapter 43-19.1 regarding registration of professional engineers and land surveyors.

SECTION 3. AMENDMENT. Section 43-03-03 of the North Dakota Century Code is amended and reenacted as follows:

43-03-03. State board of architecture and landscape architecture - Members - Term of office - How vacancies filled. The state board of architecture ~~must consist~~ and landscape architecture consists of three members appointed by the governor for terms of six years each with their terms of office so arranged that one term and only one expires on March fourteenth of each odd-numbered year. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until that member's successor is appointed and qualified, and any vacancy occurring in the board must be filled by the governor for the unexpired term.

SECTION 4. AMENDMENT. Section 43-03-04 of the North Dakota Century Code is amended and reenacted as follows:

43-03-04. Qualifications of members of board - Removal of members. ~~A~~ Each member of the board must be a resident of this state who is an architect who has been a resident of and in active practice ~~as principal~~ in this state as an architect for not less than ~~three~~ five years ~~prior to~~ before appointment. The governor may remove any ~~of the members~~ member of the board for inefficiency or neglect of duty.

SECTION 5. AMENDMENT. Section 43-03-05 of the North Dakota Century Code is amended and reenacted as follows:

43-03-05. Meetings of board - Officers elected.

1. The board shall hold ~~regular meetings on the first Monday of April and of October of each year and may hold such special meetings as are necessary~~ regular meetings at least once each year, with the date and location set by the board. The board may meet as designated by a majority of the board. The board shall select from among its members a president and a ~~secretary~~ secretary-treasurer.
2. The board may:
   a. Administer an oath;
   b. Take an affidavit;
   c. Summon a witness;
   d. Take testimony as to matters coming within the scope of the board's duties;

e. Enter an interstate or intrastate agreement or association with other boards of licensure for the purpose of establishing reciprocity, developing examinations, evaluating applicants, or other activities to enhance the services of the board to the state, the registrant, or the public; and

f. Appoint or contract an executive director and any other individual the board determines is necessary to administer the affairs of the board.

3. The board shall:

a. Adopt a seal to be affixed to each certificate of registration issued by the board;

b. Issue certificates of registration to qualified applicants; and

c. Adopt rules in accordance with chapter 28-32.

4. The secretary-treasurer shall keep a record of the proceedings of the board.

SECTION 6. AMENDMENT. Section 43-03-06 of the North Dakota Century Code is amended and reenacted as follows:

43-03-06. Salary of ~~secretary of board and members of board~~ executive director - Expenses of board. ~~The secretary of the board shall~~

1. If the board appoints or contracts an executive director, the executive director is entitled to receive such salary as ~~must be~~ fixed by a resolution of the board adopted at a regular meeting, and ~~also shall~~ is entitled to receive ~~such traveling, hotel~~ reimbursement for travel, lodging, and other expenses as are incurred legitimately in the performance of the ~~secretary's~~ executive director's official duties.

2. Each ~~of the other members~~ member of the board ~~shall~~ is entitled to receive ~~twenty-five~~ a per diem of seventy-five dollars for each day or portion ~~thereof~~ of a day spent in the discharge of the member's duties, such mileage as is provided for by section 54-06-09, and ~~must be reimbursed~~ is entitled to reimbursement for the member's actual and necessary expenses incurred in the discharge of the member's official duties.

3. The expenses of the board ~~and its officers~~ at no time may exceed the amount of moneys received and on deposit to the credit of the board under the provisions of this chapter.

SECTION 7. AMENDMENT. Section 43-03-08 of the North Dakota Century Code is amended and reenacted as follows:

43-03-08. Board to adopt rules. The board ~~may~~ shall adopt rules:

1. To govern board proceedings.
2. For the examination of candidates for registration.
3. For the regulation of the practice of architecture and landscape architecture.
4. For education requirements of registration applicants.
5. For ~~continuing education of registrants~~ practical experience requirements of registration applicants.

SECTION 8. AMENDMENT. Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

43-03-09. ~~Unauthorized practice prohibited~~ Prohibited acts - Injunction.

1. A person may not practice architecture in this state unless registered as an architect under this chapter or otherwise authorized by the board. ~~After December 31, 2004, a~~ A person may not practice landscape architecture in this state unless registered as a landscape architect under this chapter or otherwise authorized by the board.
2. A person may not fraudulently obtain or furnish a certificate of registration to practice architecture or landscape architecture.
3. A person that is not licensed under this chapter may not:
   a. Advertise, represent, or in any manner hold that person out as an architect or landscape architect;
   b. In connection with the person's business or name, or otherwise, assume, use, or advertise any term, title, or description or engage in any other conduct that reasonably might be expected to mislead another to believe the person is an architect or landscape architect; or
   c. Except as a copartnership of architects, engage in the practice of architecture or landscape architecture as a corporation.
4. Through the attorney general, the board may seek to enjoin a person from committing an act in violation of this chapter. The board is not required to prove irreparable injury to enjoin a violation of this chapter.

SECTION 9. AMENDMENT. Section 43-03-10 of the North Dakota Century Code is amended and reenacted as follows:

43-03-10. Regulation of use of ~~terms~~ titles.

1. A person may not use the title or designation "architect", "registered architect", "licensed architect", any variation of those terms, or any other words, letters, or device to indicate that person is an architect authorized to practice architecture in this state unless that person is registered as an architect under this chapter. In a copartnership of architects, each member of the partnership shall hold a certificate of registration to practice.
2. A person may not use the title or designation "landscape architect", "registered landscape architect", "licensed landscape architect", any variation of those terms, or any other words, letters, or device to indicate that person is a landscape architect authorized to practice landscape architecture in this state unless that person is registered as a landscape architect under this chapter.
3. This chapter does not authorize a landscape architect to use the title "architect" or to practice architecture.

SECTION 10. AMENDMENT. Section 43-03-11 of the North Dakota Century Code is amended and reenacted as follows:

43-03-11. Application for examination - Fee. Before an individual may take the examination for registration as an architect or a landscape architect, that individual shall make an application to the board submitting satisfactory evidence of having the required qualifications and shall pay an examination fee of not more than one hundred dollars. If an applicant fails to pass the examination, at the next regularly scheduled examination the applicant may take a partial or entire reexamination ~~is required, the~~ as determined appropriate by the board. An applicant shall pay a reexamination fee of not more than one hundred dollars for a reexamination. The fee for reexamination may be waived in whole or in part by the board.

SECTION 11. AMENDMENT. Section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

43-03-13. Qualifications. An applicant for registration as an architect or landscape architect:

1. Must be at least eighteen years of age;

2. Must be of good moral character, with rejection possible on the basis of:
   a. Conviction of an offense determined by the board to have a direct bearing upon an applicant's ability to serve the public as an architect or a landscape architect, or the board determines, following conviction of an offense, that the applicant is not sufficiently rehabilitated under section 12.1-33-02.1;
   b. Misstatement or misrepresentation of fact by the applicant in connection with that individual's application; or
   c. Violation of any of the standards of conduct required of registrants;
3. Must have successfully completed an examination for registration;
4. In the case of an architect, must ~~have the practical experience and academic training as is specified in the current guidelines published by the national council of architectural registration boards if such guidelines are adopted by the board~~ hold a professional degree in architecture from an accredited school of architecture and must have the required practical experience, as established by the board;
5. In the case of a landscape architect, must hold a professional degree in landscape architecture from an accredited school of landscape architecture and must have the required practical experience, as established by the board; and
~~5.~~ 6. Must satisfy registration criteria adopted by the board.

SECTION 12. AMENDMENT. Section 43-03-14 of the North Dakota Century Code is amended and reenacted as follows:

43-03-14. Examination.

1. Before an applicant may be registered as an architect, the applicant shall pass satisfactorily an examination ~~in such technical and professional courses as are~~ established by the board. ~~The examination must have special reference to the planning, design, and construction of buildings. The examination must cover such subjects and be graded on such basis as outlined by the national council of architectural registration boards.~~
2. Before an applicant may be registered as a landscape architect, the applicant shall pass satisfactorily an examination established by the board.
3. The board may administer an examination or may recognize a board-approved examination of a nationally recognized entity.

SECTION 13. AMENDMENT. Section 43-03-15 of the North Dakota Century Code is amended and reenacted as follows:

43-03-15. When examination not necessary. ~~A~~ The board may admit a nonresident applicant seeking to register to practice architecture or landscape architecture in North Dakota ~~may be admitted to practice if:~~

~~1. The applicant holds a license in the state where the applicant's office is located; and~~

~~2. The applicant holds a national council of architectural registration boards certificate, when:~~

~~a. The applicant files an application with the board, containing such information concerning the applicant as the board considers pertinent; and~~

~~b. The board receives from the national council of architectural registration boards a certified copy of the applicant's council record.~~ without requiring the applicant to pass an examination if the applicant is licensed to practice architecture or landscape architecture under the laws of any other state that has requirements substantially equal to those provided for under this chapter. An applicant under this section shall pay the fees provided for under section 43-03-18.

SECTION 14. AMENDMENT. Section 43-03-16 of the North Dakota Century Code is amended and reenacted as follows:

43-03-16. ~~Certificates of registration issued by board -~~ Result of examinations recorded ~~by secretary of board~~ - List of certificate holders. The result of every examination for registration as an architect or a landscape architect and the evidence of qualifications must be recorded by the ~~secretary~~ secretary-treasurer of the board. ~~The board shall issue a certificate of registration to every individual who passes the examination or otherwise is entitled to receive the certificate.~~ The ~~secretary~~ secretary-treasurer of the board shall maintain a list of architects and landscape architects certified under this ~~section~~ chapter. This list of certificate holders must contain ~~the registrant's~~ each certificate holder's name, current business address, certification number, and the expiration date of the certificate.

SECTION 15. AMENDMENT. Section 43-03-17 of the North Dakota Century Code is amended and reenacted as follows:

43-03-17. Certificates of registration - Term ~~- Renewal~~. ~~A~~ An initial certificate of registration as an architect or a landscape architect ~~must be issued for a term established by the board. Upon the payment of the proper fee, a certificate of registration may be renewed without examination~~ expires on June thirtieth of the year following the date of issuance. A renewed certificate of registration is valid for two years.

SECTION 16. AMENDMENT. Section 43-03-18 of the North Dakota Century Code is amended and reenacted as follows:

43-03-18. Fees.

1. The following fees apply to architects and landscape architects:
   a. Following examination, ~~an architect~~ a registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
   b. When examination is not necessary under section 43-03-15, ~~an architect~~ a registration fee of not more than ~~one~~ three hundred dollars, as set by the board.
   c. ~~An architect~~ A registration renewal fee, which need not be collected annually, but which must be based on no more than ~~one~~ three hundred dollars per year, as set by the board.
   d. ~~Following examination, a landscape architect registration fee of not more than five hundred dollars, as~~ Fees set by the board under this subsection are not subject to chapter 28-32.
   ~~e. A landscape architect registration renewal fee, which need not be collected annually, but which must be based on no more than five hundred dollars per year, as set by the board.~~
2. If in any year the board incurs expenses related to regulation of architects and landscape architects which are in excess of the income generated through ~~landscape architect~~ fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. ~~Landscape architect fees~~ A certificate holder who fails to pay a special fee assessed by the board under this subsection is subject to the forfeiture provisions under section 43-03-19.

3. Fees set by the board may not exceed the amount reasonably necessary to regulate the ~~profession~~ professions of architecture and landscape architecture.

~~3. If in any year the board incurs expenses related to regulation of architects which are in excess of the income generated through architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of architecture.~~

SECTION 17. AMENDMENT. Section 43-03-19 of the North Dakota Century Code is amended and reenacted as follows:

43-03-19. ~~Effect of failure to pay fee~~ Renewal - Forfeiture.

1. ~~If the~~ A holder of a certificate of registration as an architect or a landscape architect ~~fails~~ shall apply to renew the certificate and pay the associated renewal fee or a special fee when due~~, that individual's certificate must be revoked unless that individual's application for renewal is made within one year after the expiration of that individual's certificate. If application for renewal is made within one year, that individual then shall pay the delinquent fee set by the board under section 43-03-18. If a former holder applies for renewal more than one year after the expiration of that individual's certificate, that individual may, in the board's discretion, be reinstated upon payment of a fee as set by the board~~. Application for renewal must be accompanied by evidence satisfactory to the board of compliance with this chapter. Failure of a certificate holder to timely renew the certificate and pay the associated renewal fee before the expiration of the certificate results in forfeiture of the certificate.

2. ~~A certificate may not be revoked for nonpayment of fees unless the secretary of the board has first given at least thirty days' notice by certified mail to the holder of such certificate. The notice must be directed to the last known address or place of residence of the delinquent.~~ At least two months before the date of the expiration of a certificate of registration, the secretary-treasurer shall notify the certificate holder of the upcoming expiration and at least two weeks before the expiration date the secretary-treasurer shall notify any outstanding certificate holders by

certified mail, at the certificate holder's last-known address, of the upcoming expiration and resulting forfeiture.

SECTION 18. AMENDMENT. Section 43-03-20 of the North Dakota Century Code is amended and reenacted as follows:

43-03-20. Revocation, denial, or suspension of registration. If the board revokes, denies, or suspends the certificate of registration or application of a certificate holder or applicant for certificate, the certificate holder or applicant has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. The board~~, after a hearing upon thirty days' written notice to the certificate holder,~~ may revoke, deny, or suspend any certificate of registration of or application to be an architect or a landscape architect upon proof ~~that~~:

1. ~~Such~~ The certificate ~~has been~~ was obtained or attempted to be obtained by fraud, deceit, or material misrepresentation of fact in applying for a certificate or renewal of a certificate or in passage of the examination under this chapter;
2. The holder of ~~such~~ the certificate has been guilty of malfeasance, deceit, fraud, gross incompetency, or negligence in connection with the holder's practice of architecture or landscape architecture;
3. The holder of the certificate has exhibited mental incompetency, untrustworthiness, incompetency, or misconduct in the practice of architecture or landscape architecture as evidenced by conduct that endangers life, health, property, or the public welfare.
4. The holder of ~~such~~ the certificate ~~has~~ allowed a nonregistered person to practice as an architect by the device of permitting the certificate holder's name or stamp to be placed upon drawings, or other contract documents, not prepared by the holder or under the holder's direct supervision;
5. The holder of the certificate or applicant had an architecture or a landscape architecture license of another state suspended or revoked or was otherwise disciplined by another state;

~~4.~~ 6. The holder of ~~such~~ the certificate ~~has been~~ or applicant was convicted of an offense determined by the board to have a direct bearing upon the certificate holder's or applicant's ability to serve the public as an architect or landscape architect; or that, following conviction of an offense, the holder or applicant is not sufficiently rehabilitated under section 12.1-33-02.1; or

~~5.~~ 7. The holder of ~~such~~ the certificate ~~has~~ or applicant violated this chapter or rules adopted under this chapter. If a certificate holder or applicant is convicted of a crime in another state which would constitute a violation of this chapter had the criminal action taken place in this state, a copy of the judgment of conviction certified by the rendering court is presumptive evidence of the conviction in any hearing under this section. For purposes of this subsection, a conviction includes a plea of nolo contendere or its equivalent.

SECTION 19. AMENDMENT. Section 43-03-22 of the North Dakota Century Code is amended and reenacted as follows:

43-03-22. Stamp. At the time of the issuance of the certificate of registration, the board shall ~~furnish to the applicant~~ require the certificate holder to acquire, at the ~~applicant's~~ certificate holder's expense, a ~~rubber~~ stamp or indicia to be used by the ~~applicant~~ certificate holder in the conduct of the ~~applicant's~~ certificate holder's practice and to be impressed upon drawings, plans, and other documents prepared by the ~~applicant~~ certificate holder. The board shall ~~prescribe~~ adopt rules governing the ~~use~~ technical requirements of such stamp and indicia and ~~applicant's~~ the certificate holder's signature.

SECTION 20. REPEAL. Sections 43-03-12, 43-03-24, and 43-03-25 of the North Dakota Century Code are repealed.