

1 SB59
2 115509-3
3 By Senator Means
4 RFD: Governmental Affairs
5 First Read: 12-JAN-10
6 PFD: 12/17/2009

1 SB59

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3
4 ENROLLED, An Act,

5 To amend Sections 34-2-30, 34-2-32, 34-2-33,
6 34-2-34, 34-2-35, 34-2-36, 34-2-37, 34-2-38, 34-2-40, 34-2-41,
7 and 34-2-42, Code of Alabama 1975, relating to when an
8 architect is required; to provide for the definition of
9 "responsible control" over the practice; change the obsolete
10 title of superintendent to on-site observer; provide further
11 for grounds and notification of disciplinary actions; remove
12 overly restrictive firm ownership and naming requirements;
13 provide for civil penalties for violations; and change the
14 obsolete title of secretary to executive director.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 34-2-30, 34-2-32, 34-2-33,
17 34-2-34, 34-2-35, 34-2-36, 34-2-37, 34-2-38, 34-2-40, 34-2-41,
18 and 34-2-42, Code of Alabama 1975, are amended to read as
19 follows:

20 "§34-2-30.

21 "For the purposes of this chapter, the following
22 words and phrases shall have the meanings respectively
23 ascribed by this section:

24 "(1) ARCHITECT. An individual who is legally
25 qualified to practice architecture.

1 "(2) PRACTICE OF ARCHITECTURE. When an individual
2 holds himself or herself out as able to render or when the
3 person does render any service by consultations,
4 investigations, evaluations, preliminary studies, plans,
5 specifications, contract documents and a coordination of all
6 factors concerning the design and observation of construction
7 of buildings or any other service in connection with the
8 design, observation or construction of buildings located
9 within the boundaries of the state, regardless of whether such
10 services are performed in connection with one or all of these
11 duties, or whether they are performed in person or as the
12 directing head of an office or organization performing them.

13 "(3) PRACTICE ARCHITECTURE or PRACTICING
14 ARCHITECTURE. Performing or doing, or offering or attempting
15 to do or perform any service, work, act, or thing within the
16 scope of the "practice of architecture."

17 "An individual shall be construed to hold himself or
18 herself out as practicing architecture when, by verbal claim,
19 sign, advertisement, letterhead, card or any other way, the
20 individual represents himself or herself to be an architect
21 with or without qualifying adjective, or when he or she
22 implies that he or she is an architect through the use of some
23 other title.

24 "(4) BUILDING. A structure consisting of foundation,
25 walls, or supports and roof, with or without related

1 components, systems, or other parts comprising a completed
2 building ready for occupancy.

3 "(5) RESPONSIBLE CONTROL. Control over all phases of
4 the practice of architecture, including, but not limited to,
5 control over and detailed knowledge of the content of
6 technical submissions during their preparation as is
7 ordinarily exercised by registered architects applying the
8 required professional standard of care.

9 "§34-2-32.

10 "(a) Nothing contained in this chapter shall
11 prevent:

12 "(1) Employees of registered architects from acting
13 under the instructions or responsible control of their
14 employers; or,

15 "(2) The employment of on-site observers of the
16 construction or alteration of buildings.

17 "(b) No person shall be required to register as an
18 architect in order to make plans and specifications for or
19 administer the erection, enlargement, or alteration of any
20 building upon any farm for the use of any farmer, irrespective
21 of the cost of such building, or any single family residence
22 building or any utility works, structures, or building,
23 provided that the person performing such architectural works
24 is employed by an electric, gas, or telephone public utility
25 regulated pursuant to the laws of Alabama or by a corporation

1 affiliated with such utility, or of any other type building(s)
2 which has a total area of less than 2,500 square feet provided
3 it is not intended for use as a school, church, auditorium, or
4 other building intended for the assembly occupancy of people.

5 "(c) The services of a registered architect shall be
6 required on all buildings except those hereinabove exempted
7 and no official of this state or of any city, town, or county
8 herein charged with the enforcement of laws, ordinances, or
9 regulations relating to the construction or alteration of
10 buildings, shall accept or approve any plans or specifications
11 that are not so prepared.

12 "(d) Nothing in this chapter shall prevent
13 registered professional engineers or their employees or
14 subordinates under their responsible control from performing
15 architectural services incidental to their engineering
16 practice. Nothing in this chapter shall prevent registered
17 architects or their employees or subordinates under their
18 responsible control from performing engineering services
19 incidental to their architectural practice.

20 "No professional engineer shall practice
21 architecture or use the designation "architect" or any terms
22 derived therefrom unless that individual is registered
23 pursuant to this chapter. No architect shall practice
24 professional engineering or use the term "engineer" or any

1 term derived therefrom unless that individual is also
2 qualified and registered as an engineer.

3 "§34-2-33.

4 "(a) The board shall receive applications for
5 registration as an architect only on forms prescribed and
6 furnished by the board.

7 "Upon receipt of the application and the payment of
8 a fee, as established by the board, the fee in no event
9 exceeding two hundred fifty dollars (\$250), the board shall
10 promptly notify the applicant of examination requirements for
11 registration, if applicable.

12 "The board may contract with an independent testing
13 agency to prepare, grade, or conduct the examination. If the
14 board determines the applicant requires examination, the
15 applicant shall pay the actual cost of the examination
16 directly to the board-authorized testing agency.

17 "(b) The board may issue to an applicant without
18 further examination, a certificate of registration as an
19 architect, provided the applicant holds an unexpired
20 certificate issued to him or her by the National Council of
21 Architectural Registration Boards, hereinafter referred to as
22 "NCARB."

23 "(c) The following facts established in the
24 application shall be regarded as prima facie "evidence"

1 satisfactory to the board that the applicant is fully
2 qualified to be examined for registration:

3 "(1) Graduation after a course of study of a length
4 as the board shall by regulation determine from a school or
5 college of architecture accredited by the National
6 Architectural Accrediting Board, hereinafter referred to as
7 "NAAB"; and

8 "(2) An additional period of practical experience in
9 architectural work under the responsible control of a
10 registered architect or architects as the board by regulation
11 shall deem appropriate.

12 "Unless exempted, applicants shall take and pass the
13 professional examination administered by the board or an
14 independent testing agency approved by the board.

15 "(d) In determining the sufficiency of the
16 qualifications of the applicant for registration, a majority
17 vote of the members of the board shall be required.

18 "(e) Certificates for registration shall expire on
19 the thirtieth day of September following their issuance or
20 renewal and shall become invalid on that day unless renewed.

21 "Certificates of registrants who are or may be in
22 the armed forces of the United States shall not expire until
23 the thirtieth day of September following the discharge or
24 final separation of the registrant from the armed forces of
25 the United States.

1 "(f) Renewal may be effected at any time prior to or
2 during the month of September by the payment of a fee
3 established by the board not to exceed two hundred fifty
4 dollars (\$250).

5 "A penalty not to exceed the sum of seventy-five
6 dollars (\$75) may be added to the renewal fee for failure to
7 renew a certificate upon such terms and conditions as the
8 board may by regulation determine. Failure to renew a
9 certificate of registration by December 31 shall result in a
10 lapse of registration.

11 "(g) A registrant whose certificate of registration
12 has lapsed may have it reinstated, if in compliance with other
13 relevant requirements, by filing a renewal form and paying, in
14 addition to the appropriate renewal fee and late penalty, a
15 reinstatement fee of two hundred fifty dollars (\$250).

16 "(h) There is hereby created, for renewal of
17 certificate purposes, a status to be known as "emeritus status
18 architect," which shall apply to architects who have been
19 registered for 10 consecutive years or longer, and who are 65
20 years of age or older, and who have retired from active
21 practice. The annual renewal of registration for emeritus
22 status shall be renewed without payment of a fee. If an
23 emeritus status architect subsequently wishes to practice, he
24 or she may do so without penalty by proper application to the
25 board.

1 "§34-2-34.

2 "The board shall have the following disciplinary
3 powers:

4 "(1) To issue reprimands to any licensee who
5 violates any provision of this chapter or the rules and
6 regulations of the board.

7 "(2) To levy administrative fines for serious
8 violations of this chapter or the rules and regulations of the
9 board of not more than \$5,000 for each day the violation
10 continues, but in no event shall an administrative fine exceed
11 \$25,000 total per violation.

12 "(3) To refuse to issue a certificate, to suspend a
13 certificate for a definite period or to revoke the certificate
14 of registration of an architect who is found guilty of:

15 "a. Any fraud or deceit in obtaining a certificate
16 of registration as determined by the board at a hearing;

17 "b. Gross negligence, incompetence, or misconduct in
18 the practice of architecture as determined by the board at a
19 hearing;

20 "c. A felony or misdemeanor involving moral
21 turpitude by a court of competent jurisdiction;

22 "d. Practicing architecture in this state in
23 violation of the standards of professional conduct established
24 by the board;

1 "e. Practicing architecture in this or any other
2 state or country in violation of the laws of that state or
3 country; or

4 "f. Aiding or abetting any individual, partnership
5 or corporation to engage in the practice of architecture in
6 violation of any provisions of law.

7 "(4) Pursuant to this subdivision (3), notice of the
8 nature of the charges placed against an architect and the time
9 and place of hearing these charges by the board must be sent
10 to the accused by certified mail, with return receipt
11 requested, and addressed to his or her last known place of
12 business, or residence, not less than 30 days before the date
13 fixed for such hearing. The notice shall inform the individual
14 that he or she is entitled to be represented by counsel of his
15 or her choosing at the hearing, to have witnesses testify in
16 his or her behalf at the hearing, to confront and
17 cross-examine witnesses at the hearing and to testify in his
18 or her own behalf at the hearing.

19 "In all cases of reprimand, administrative fine,
20 refusal, suspension, or revocation of a certificate of
21 registration, or any other disciplinary action of the board,
22 the accused may appeal to the Circuit Court of Montgomery
23 County, Alabama. Either party, the accused or the board, has
24 the right to appeal from the final decree of the circuit court
25 as provided by law.

1 "§34-2-35.

2 "(a) Each registrant must obtain a seal of a design
3 authorized by the board bearing the registrant's name, the
4 legend "Registered Architect(s)," the words "State of Alabama"
5 and the registrant's license registration number.

6 "(b) Nothing in this chapter shall prevent a
7 registered architect from being employed by a person, firm,
8 partnership, corporation, or professional corporation.

9 "(c) Plans, specifications, plates, and reports, and
10 all documents prepared by an architect which are issued by a
11 registrant must be stamped with the seal during the life of a
12 registrant's certificate.

13 "(d) It shall be unlawful for anyone to stamp or
14 seal any document with the seal after the certificate or the
15 registrant named thereon has expired or been suspended or
16 revoked.

17 "(e) It shall be unlawful for an architect or any
18 other individual to stamp, to cause to be stamped or to allow
19 to be stamped any document or documents which were not
20 prepared under the responsible control of the registered
21 architect whose stamp is to be affixed thereon.

22 "(f) On or after July 22, 1987, it shall be
23 unlawful: (1) to practice architecture in a branch office not
24 under the day-to-day supervision of a registered architect, or
25 (2) for an architect to falsely represent himself or herself

1 as being in responsible control of architectural work or to
2 permit his or her seal, or facsimile thereof, to be used by
3 another for any purpose. Violations shall be penalized as
4 provided in Section 34-2-36.

5 "§34-2-36.

6 "(a) On or after April 28, 1999, any person who
7 knowingly, willfully, or intentionally violates any provision
8 of this chapter shall be guilty of a Class A misdemeanor. Each
9 day of violation shall constitute a distinct and separate
10 offense.

11 "(b) When it appears to the board that any person is
12 violating any of the provisions of this chapter, the board may
13 in its own name bring an action in the circuit court for an
14 injunction, and the court may enjoin any person from violating
15 this chapter regardless of whether the proceedings have been
16 or may be instituted before the board or whether criminal
17 proceedings have been or may be instituted.

18 "(c) In addition to any other provisions of law, the
19 board may enter an order assessing a civil penalty against any
20 nonregistered person, corporation, or other entity found
21 guilty by the board of, but not limited to, the following
22 violations of this chapter:

23 "(1) Engaging in the practice or offer to practice
24 architecture in this jurisdiction without being registered in
25 accordance with this chapter.

1 "(2) Using or employing the words "architect,"
2 "architecture," or any modification or derivative thereof in
3 its name or form of business activity, except as authorized in
4 this chapter.

5 "(3) Presenting or attempting to use the certificate
6 of registration or the seal of another registered architect to
7 the board or a member of the board in obtaining or attempting
8 to obtain a certificate of registration.

9 "(4) Giving false or forged evidence of any kind to
10 the board or a member of the board in obtaining or attempting
11 to obtain a certificate of registration.

12 "(5) Falsely impersonating another registered
13 architect of like or different name.

14 "(6) Using or attempting to use a revoked or
15 nonexistent certificate of registration.

16 "(7) Directing the professional judgment of a
17 registered architect who is responsible for the practice of
18 architecture.

19 "(d) The board shall determine the amount of the
20 civil penalty which shall not exceed five thousand dollars
21 (\$5,000) for each day the violation continues and shall not be
22 greater than twenty-five thousand dollars (\$25,000) total per
23 violation.

24 "(e) Before issuing an order under this section, the
25 board shall provide the person written notice and the

1 opportunity to request, within 30 days of the notice by the
2 board, a hearing on the record.

3 "(f) Pursuant to the proceedings under this section,
4 the board may issue subpoenas to compel the attendance and
5 testimony of witnesses and disclosure of evidence and may
6 request the Attorney General to bring an action to enforce a
7 subpoena.

8 "(g) A person aggrieved by the levy of a civil
9 penalty under this section may file an appeal to the Circuit
10 Court of Montgomery County exclusively for judicial review of
11 the penalty within 30 days notwithstanding the Administrative
12 Procedure Act. Unless an appeal is taken or the penalty paid,
13 the order of the board imposing the civil penalty shall become
14 a judgment.

15 "(h) If a person fails to pay a civil penalty within
16 30 days after entry of an order pursuant to subsection (a) or
17 if the order is stayed pending an appeal, within 10 days after
18 the court enters a final judgment in favor of the board of an
19 order appealed pursuant to subsection (e), the board shall
20 notify the Attorney General. The Attorney General may commence
21 a civil action to recover the amount of the penalty plus
22 attorney's fees and costs.

23 "(i) The cost to the board of the action shall be
24 paid by the respondent if found in violation.

25 "§34-2-37.

1 "It shall be lawful for a corporation, a
2 professional corporation, a professional association, a
3 partnership, or a limited liability company (the entity) to
4 practice architecture in this state provided that:

5 "(a) A minimum of two-thirds of those responsible
6 for controlling the activities of the entity (including
7 officers, partners, directors, members, and others depending
8 on the legal structure of the entity) are voting stockholders
9 who are architects and/or professional engineers registered
10 under the laws of any United States jurisdiction and at least
11 one is an architect registered in Alabama.

12 "(b) Any agreement to perform such services shall be
13 executed on behalf of the entity by a stockholding officer,
14 partner, director, or member with authority to contractually
15 bind the entity, who is an architect registered in the State
16 of Alabama.

17 "(c) A stockholding officer, partner, director, or
18 member who is an architect registered in the State of Alabama
19 shall exercise responsible control over the particular
20 services contracted for by the entity and that architect's
21 name and seal shall appear on all documents prepared by the
22 entity in its practice of architecture.

23 "(d) Other officers, partners, directors, or members
24 shall not direct the professional judgment of the architect in

1 responsible control over the practice of architecture by the
2 entity.

3 "(e) The entity shall furnish the board with such
4 information about its organization and activities as the board
5 shall require by regulation and pay an annual administrative
6 fee as the board may require, not to exceed two hundred fifty
7 dollars (\$250). The board shall maintain a public roster of
8 such entities.

9 "All corporations, professional corporations,
10 professional associations, partnerships, and limited liability
11 companies (entities) practicing architecture in the State of
12 Alabama must fully comply with the above requirements within
13 two years of this requirement becoming law.

14 "Applications to practice as an above described
15 entity shall be made on an annual basis. Disciplinary action
16 for the entities shall be the same as for registered
17 architects. Approved entities shall be responsible for the
18 acts of their agents, employees, general partners, directors,
19 or officers.

20 "§34-2-38.

21 "To carry out the provisions of this chapter, there
22 shall be a State Board for Registration of Architects,
23 consisting of six members, each of whom shall be appointed by
24 the Governor from a list of three persons selected as follows:

1 "(1) All appointments as members of the board shall
2 be architects registered and licensed pursuant to this
3 chapter. The board shall be appointed from the following
4 districts: One from the northern district; two from the north
5 central district; two from the central district, and one from
6 the southern district. The northern district shall be
7 comprised of the Counties of Colbert, Cullman, DeKalb,
8 Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison,
9 Marion, Marshall, Morgan, and Winston; the north central
10 district shall be comprised of the Counties of Bibb, Blount,
11 Calhoun, Cherokee, Clay, Cleburne, Etowah, Fayette, Greene,
12 Hale, Jefferson, Lamar, Pickens, Randolph, Shelby, St. Clair,
13 Sumter, Talladega, Tuscaloosa, and Walker; the central
14 district shall be comprised of the Counties of Autauga,
15 Barbour, Bullock, Butler, Chambers, Chilton, Coffee, Coosa,
16 Covington, Crenshaw, Dale, Dallas, Elmore, Geneva, Henry,
17 Houston, Lee, Lowndes, Macon, Marengo, Montgomery, Perry,
18 Pike, Russell, Tallapoosa, and Wilcox; and the southern
19 district shall be comprised of the Counties of Baldwin,
20 Choctaw, Clark, Conecuh, Escambia, Mobile, Monroe, and
21 Washington.

22 "(2) Thirty days before the expiration of a board
23 member's term, or for filling a vacancy otherwise occurring, a
24 nominating committee of six members shall be selected by
25 secret ballot from the district entitled to fill the vacancy.

1 The nominating committee shall be elected at a meeting in the
2 district called by the executive director of the board, who
3 shall give notice in writing of the time and place of the
4 called meeting to each architect in the district at least 30
5 days in advance of the date set for the meeting. Those
6 architects present at the called meeting may vote on the
7 membership of the nominating committee. After the selection of
8 the nominating committee from the district where the vacancy
9 occurs, there shall be a meeting of the committee with the
10 board at the same place within five days to select, by secret
11 ballot, the names of three persons to be sent to the Governor
12 by the executive director of the board. The Governor shall
13 appoint one of the named persons to the board. In appointing
14 members to the board, the Governor shall select those persons
15 whose appointments, to the extent possible, ensure that the
16 membership of the board is inclusive and reflects the racial,
17 gender, geographic, urban/rural, and economic diversity of the
18 state.

19 "(3) The term of office of the members of the board
20 shall be four years and until their successors are appointed
21 and qualified.

22 "(4) A member shall reside and have his or her
23 principal office in the district from which appointed. A
24 member's place on the board shall become vacant if the member

1 removes either his or her residence or principal office from
2 that district.

3 "§34-2-40.

4 "(a) The board shall hold at least four regular
5 meetings each year.

6 "(b) The board shall elect annually a chairman and
7 vice chairman who must be members of the board. The board may
8 employ an executive director, clerks, experts, attorneys, and
9 others, as may be necessary in the carrying out of the
10 provisions of this chapter.

11 "(c) The board shall have the power, with the
12 approval of the Governor, to fix the compensation of the
13 executive director and other employees.

14 "(d) A quorum of the board shall consist of not less
15 than a majority of the duly appointed board members.

16 "§34-2-41.

17 "The executive director of the board shall receive
18 and account for all moneys derived from the operation of this
19 chapter. Such moneys shall be certified into the treasury in a
20 fund to be known as the "Fund of the Board for the
21 Registration of Architects." Such fund shall be drawn against
22 only for the purposes of this chapter.

23 "The fiscal year shall commence on the first day of
24 October and end on the thirtieth day of September.

1 "Each member of the board shall receive a per diem
2 as recommended by the board consistent with applicable state
3 laws for attending sessions of the board or its committee, and
4 for the time spent in necessary travel to attend meetings of
5 the board or its committee. In addition, each member of the
6 board shall be reimbursed for traveling and clerical expenses
7 incurred in carrying out the provisions of this chapter.

8 "Expenses certified by the board as properly and
9 necessarily incurred in the discharge of its duties,
10 including, but limited to, authorized compensations,
11 additional legal services, experts, clerks, office rent, and
12 supplies, shall be paid out of the fund on the warrant of the
13 Comptroller of the state. Such warrant shall be issued on
14 requisitions signed by the chairman and executive director of
15 the board. At no time in any fiscal year shall the total
16 amount of warrants issued exceed the total amount of moneys
17 accumulated in this fund.

18 "The board may make donations from its surplus funds
19 to any state educational institution which has an accredited
20 school of architecture for assistance in promoting education
21 and research programs in architecture.

22 "The chairman and the executive director of the
23 board shall give a surety bond in an amount no less than the
24 previous year's budget payable to the State of Alabama and
25 conditioned upon the faithful performance of their duties

1 under this chapter. The premium of the bond shall be paid out
2 of the moneys in the Fund of the Board for the Registration of
3 Architects.

4 "§34-2-42.

5 "On or before January 1 of each year, the board
6 shall submit to the Governor a report of its transactions for
7 the preceding fiscal year, together with a complete statement
8 of receipts and disbursements of the board for its last fiscal
9 year, certified by the chairman and the executive director."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB59
Senate 11-FEB-10
I hereby certify that the within Act originated in and passed
the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 14-APR-10

By: Senator Means