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## "DESIGN PROFESSIONALS"

House Bills 4787 and 4788  
Sponsor: Rep. Joe Young, Jr.  
Committee: State Affairs

Complete to 5-17-93

### A SUMMARY OF HOUSE BILLS 4787 AND 4788 AS INTRODUCED 5-13-93

Article 20 of the Occupational Code (Public Act 299 of 1980) regulates architects, professional engineers, and professional surveyors and subjects them to certain penalties (listed in Article 6 of the code) for committing certain actions (such as using certain titles without being licensed under the code, using another licensee's license or seal -- or an expired, suspended, or revoked license -- or using certain terms in a firm's name without proper authorization by the appropriate board).

House Bill 4787 would amend the Occupational Code (Public Act 299 of 1980) to allow investigations and legal actions against the unauthorized practice of architecture, professional engineering, or professional surveying. House Bill 4788 would amend the State License Fee Act (Public Act 152 of 1979) to create a "design professional enforcement fund" for these investigations and the enforcement of legal actions against people practicing these "design professions" without a license or in violation of Article 20 of the code. [Note: House Bill 4787 refers to the now-defunct Department of Licensing and Regulation (DLR), while House Bill 4788 refers to the Department of Commerce, which took over the DLR's occupational and professional regulatory functions.]

House Bill 4787 would amend the Occupational Code (MCL 339.2001 et al.) to call architects, professional engineers, and professional engineers licensed under the code "design professionals," and to subject them to existing penalties for practicing any of these professions without the proper license, for using one of these titles without having the proper license, or for practicing one of these professions with a firm that did not comply with the requirements of the Occupational Code.

Complaint procedure and investigations. When the Department of Licensing and Regulation (Note: The department was abolished by executive order in 1991 and its functions transferred to the Department of Commerce) received or initiated a complaint it would be required to "immediately" begin an investigation against the licensee or unlicensed person and would open a "correspondence file." Within 30 days after receiving a complaint, the department would have to acknowledge the complaint in writing and select not more than three design professionals (from lists established by the appropriate boards) who had contracted with the department to conduct investigations and who were in the appropriate profession in question. Investigators would be compensated and reimbursed by the department for their expenses from the "design professional enforcement fund" established under House Bill 4788. Both the investigators and any design professional making the complaint would be immune from civil liability except for intentional harm or gross negligence.

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Investigations would have to be completed and reports filed with the director of the department and the attorney general within 60 days after the department received the complaint. For good cause shown, the director of the department could grant an extension.

Investigation reports and case dispositions. If the report did not disclose a violation (of the act or a rule or order issued under the act), the department would close the complaint and forward the reasons for closing the complaint to both the respondent and the complainant. However, the complainant could provide additional information to reopen the complaint.

If a report disclosed a violation, the department or the attorney general would prepare one of a number of possible actions against the respondent: a formal complaint, a cease and desist order, a notice of summary suspension, or a citation.

Cease and desist orders. Someone ordered to cease and desist after an investigation would be entitled to a hearing before the department if he or she filed a written request for a hearing within 30 days after the effective date of the order. If someone violated a cease and desist order, the attorney general would ask the circuit court to restrain and enjoin (temporarily or permanently, or both) the person from violating the cease and desist order.

The attorney general (or his or her designee) would represent the department at cease and desist hearings, as well as appoint special assistant attorneys general to perform the legal services required by the bill. Payment for the legal services also would be made from the design professional enforcement fund.

Civil actions. In addition to any actions brought by the department, individuals could bring civil actions to enjoin the unauthorized practice of architecture, professional engineering, or professional surveying. Someone who won such a civil action would be awarded by the court the costs and actual attorney fees incurred in pursuing the action.

Other provisions. The bill would say that the legislature recognized that the unlicensed practice of architecture, professional engineering, and professional surveying imposed "a particular, immediate, and irreparable harm to the health and safety of the people of this state."

House Bill 4788 would amend the State License Fee Act (MCL 339.2001) to establish a "design professional enforcement fund" in the Department of Commerce to be used only for investigation and enforcement activities conducted under Article 20 of the Occupational Code (which regulates architects, professional engineers, and professional surveyors). Revenue for the fund would come from assessments charged to "design professionals" (that is, architects, professional engineers, and professional surveyors) when they applied for licenses or license renewals. The amount of the additional fee would be established by the design professional licensing boards for deposit into the fund, and administrative fines under the bill also would be credited to the fund.

Additional assessments. If, on July 1 of any year, the balance of the fund was less than \$125,000, the director of the Department of Commerce would require an additional

assessment or payment of up to \$50 from each licensed design professional unless, within 30 days, the boards of architecture, professional engineering, and professional surveying adopted a resolution ("acting jointly and by a majority vote of the members appointed and serving by record roll call") to prohibit the additional assessment. If the boards did not adopt such a resolution, the legislature, within 30 legislative days, also could prohibit the additional assessment by adopting a concurrent resolution to that effect.

Departmental responsibilities. The director of the Department of Commerce would manage the affairs of the fund and annually publish a detailed financial statement on the condition of the fund. The fund would be subject to an annual audit by the auditor general, and its findings would be made public. The usual provisions would apply to the fund: the treasurer would deposit or invest money from the fund ("in the same manner and subject to all provisions of law with respect to the deposit or investment of state funds by the state treasurer") and interest earned from investments would be credited to the fund. The unexpended fund balance would carry forward to the new fiscal year at the end of each fiscal year.

The department would contract with design professionals to investigate complaints and employ any necessary administrative help. In addition, the attorney general could contract with private attorneys, if necessary to adequately enforce licensure actions against people practicing without a license or in violation of Article 20. [Note: The bill does not contain provisions for taking disciplinary actions against people who do not hold a license.]

Operation of the fund. All wages, fees for design professional investigators, and legal fees for legal counsel would be charged to and paid from the design professional enforcement fund. Wages and other administrative expenditures to operate the fund couldn't be more than 35 percent of the fund revenues collected the previous year. However, if there were a year in which fees weren't assessed against license applications and renewals, the maximum fund expenditures would be based on the closest previous year in which fees had been assessed.

Payments from the fund. Except from the fund, no state officers or employees administering the bill (nor the state itself) would be personally liable for any money owed to design professional investigators or private attorneys for services rendered under contract. If the Department of Commerce made payments from the fund for enforcing Article 20, the department could sue someone for whom a final administrative or court order had been rendered and applied, with proceeds from administrative fines to be deposited into the fund.

Tie-bar. The bills are tie-barred to each other.