WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Com. Sub. for
HOUSE BILL No. 4134

(By Del. Landreth & Wooten)

Passed March 6, 1990

In Effect ninety days from Passage
AN ACT to amend and reenact article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to architects; the West Virginia board of architects; definitions; fees; registration qualifications; registration renewal; certificate of registration; requiring seal; disciplinary powers of board; disciplinary proceedings; registration prima facie evidence; prohibited acts; construction administration services; exceptions; enforcement of rules by attorney general or prosecuting attorney; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. ARCHITECTS.

§30-12-1. Board of architects.

1 The West Virginia board of architects, heretofore created, shall continue in existence and shall consist of seven members, five of whom shall be architects, appointed by the governor by and with the advice and
consent of the Senate and two of whom shall be lay members, not of the same political party affiliation, appointed by the governor by and with the advice and consent of the Senate. Each member who is an architect shall have been engaged in the active practice of his profession in the state of West Virginia for not fewer than ten years previous to his appointment. The members of the board in office on the date this article takes effect, in the year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

The board, in addition to the authority, powers and duties granted to it by this article, has the authority to promulgate rules, pursuant to the provisions of chapter twenty-nine-a of this code. Any disciplinary proceedings held by the board shall be held in accordance with the provisions of the administrative procedures act for contested cases pursuant to the provisions of article five of chapter twenty-nine-a of this code.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia board of architects shall continue to exist until the first day of July, one thousand nine hundred ninety-two.

§30-12-2. Definitions.

The following words as used in this article, unless the context otherwise requires, have the following meanings:

(1) “Architect” means any person who engages in the practice of architecture as hereinafter defined.

(2) “Board” means the West Virginia board of architects established by section one of this article.

(3) “Direct supervision” means that degree of supervision by a person overseeing the work of another person whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

(4) “Good moral character” means such character as
will enable a person to discharge the fiduciary duties of an architect to his client and to the public for the protection of health, safety and welfare. Evidence of inability to discharge such duties include the commission of an offense justifying discipline under section eight of this article.

(5) "Practice of architecture" means rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and surrounding such buildings, which have as their principal purpose human occupancy or habitation; the services referred to include planning, providing preliminary studies, designs, drawings, specifications and other technical submissions and administration of construction contracts.

(6) "Registered architect" means an architect holding a current registration.

(7) "Registration" means the certificate of registration issued by board.

(8) "Technical submissions" means designs, drawings, specifications, studies and other technical reports prepared in the course of practicing architecture.

§30-12-3. Fees.

(a) Notwithstanding any other provision of the law to the contrary, the board is authorized and empowered to establish a schedule of fees to be charged to applicants. The board shall charge for: Examination, reexamination, renewal of certificates, restoration of expired certificates, reciprocal registration and for any other matters deemed appropriate by the board.

(b) The board shall cause such schedule of fees to be published annually in the state register. Until such time as the board establishes otherwise, the fees previously set by statute remain in effect.

§30-12-4. Registration qualifications.

Every person applying to the board for initial registration shall submit an application accompanied by
the fee established in accordance with section three of
this article with satisfactory evidence that such person
holds an accredited professional degree in architecture
or has completed such other education as the board
considers equivalent to an accredited professional
degree and with satisfactory evidence that such person
has completed such practical training in architectural
work as the board requires. If an applicant is qualified,
the board shall, by means of a written examination,
examine the applicant on such technical and profes-
sional subjects as prescribed by it. None of the exam-
ination materials are public records as defined in article
one, chapter twenty-nine-b of this code. The board may
exempt from such written examination an applicant
who holds certification issued by the national council of
architectural registration boards. The board may adopt
as its own rules governing practical training and
education those guidelines published from time to time
by the national council of architectural registration
boards. The board may also adopt the examinations and
grading procedures of the national council of architec-
tural registration board and the accreditation decisions
of the national architectural accrediting board. The
board shall issue its registration to each applicant who
is found to be of good moral character and who satisfies
the requirements set forth in this section. The registra-
tion is effective upon issuance.

§30-12-5. Registration renewal.

The board shall mail each year to every registered
architect an application for renewal of registration. The
application, properly filled out and accompanied by the
renewal fee established in accordance with section three
of this article, shall be returned to the board on or before
the date established by the board. After verification of
the facts stated in the renewal application, the board
shall issue a registration which is valid for one year,
expiring on the thirtieth day of June of each year. Any
holder of a registration who fails to renew his or her
application on or before the prescribed date, before
again engaging in the practice of architecture within
the state, is required to apply for reinstatement, pay the
prescribed fee and, in circumstances considered appropriate by the board, may be required to be reexamined.

§30-12-6. Certificate of registration.

1 Every registered architect having a place of business or employment within the state shall display his or her certificate of registration in a conspicuous place in such place of business or employment. A new certificate of registration, to replace a lost, destroyed or mutilated certificate, shall be issued by the board upon payment of a fee established in accordance with section three of this article and such certificate shall be stamped or marked “duplicate.”

§30-12-7. Seal.

(a) Every registered architect shall have a seal of a design authorized by the board by rule. All technical submissions prepared by such architect, or under his or her direct supervision, shall be stamped with the impression of his or her seal. No architect holding a registration may impress his or her seal on any technical submissions unless they were prepared under his or her direct supervision: Provided, That in the case of the portions of such technical submissions prepared under the direct supervision of persons consulting with or employed by the architect, the architect may sign or seal those portions of the technical submission if the architect has reviewed such portions and has coordinated their preparation.

(b) No public official charged with the enforcement duties of a municipal building inspector may accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped as required by this section or by a registered engineer or the applicant has certified thereon the applicability of a specific exception under section twelve of this article permitting the preparation of such technical submissions by a person not registered thereunder. A building permit issued with respect to technical submissions which do not conform with the requirements of this section is invalid.
§30-12-8. Disciplinary powers.

The board may revoke, suspend or annul a registration, or impose a civil penalty in an amount not more than two thousand dollars for each violation, upon satisfactory proof to the board that any person has violated the provisions of this article or any rules promulgated by the board under this article. In hearing matters arising under this section, the board may take into account suitable evidence of reform.

§30-12-9. Disciplinary proceedings.

Charges against any person involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board. Such charges, at the discretion of the board, shall be heard within a reasonable time after being so filed. The accused person has the right at such hearing to appear personally, with or without counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in his or her defense. The board shall set the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused person, at his or her latest place or residence or business known to the board, at least thirty days before such date. If after such hearing the board finds the accused person has violated any of the provisions of this article or any of the rules promulgated by the board, it may issue any order described in section eight of this article. If the board finds no such violation, then it shall enter an order dismissing the charges. If the order revokes, suspends or annuls an architect's registration, the board shall so notify, in writing, the secretary of state and the clerk of the municipality in the state wherein such architect has a place of business, if any.

The board may reissue a registration to any person whose registration has been revoked. Application for the reissuance of the registration shall be made in such a manner as the board may direct and shall be accompanied by a fee established in accordance with section three of this article.
§30-12-10. Registration; prima facie evidence.
1 Every registration issued and remaining in force is
2 prima facie evidence in all courts of the state that the
3 person named therein is legally registered as an
4 architect for the period for which it is issued and of all
5 other facts stated therein.

§30-12-11. Prohibition.
1 Except as hereinafter set forth in section twelve of
2 this article, no person may directly or indirectly engage
3 in the practice of architecture in the state or use the title
4 “architect,” “registered architect,” “architectural
titles, sign, card, advertisement or other symbol or
designer,” or display or use any words, letters, figures,
device indicating that such person is an architect or is
practicing architecture, unless he or she is registered
under the provisions of this article. No person may aid
or abet any person, not registered under the provisions
of this chapter, in the practice of architecture.

§30-12-11a. Construction administration services
required.
(a) The owner of any real property who allows a
project to be constructed on such real property shall be
engaged in the practice of architecture unless such
owner may have employed or may have caused others
to have employed a registered architect or registered
engineer to furnish “construction administration servi-
ces” with respect to such project.
(b) For purposes of this section, the following terms
shall have the following meanings:
(1) “Building official” means the person appointed by
the municipality or state subdivision having jurisdiction
over the project to have principal responsibility for the
safety of the project as finally built.
(2) “Construction administration services” comprises
at the following services: (A) Visiting the construction
site on a regular basis as is necessary to determine that
the work is proceeding generally in accordance with the
technical submissions submitted to the building official
at the time the building permit was issued; (B) process-
ing shop drawings, samples, and other submittals
required of the contractor by the terms of construction
contract documents; and (C) notifying an owner and the
building official of any code violations, changes which
affect code compliance, the use of any materials,
assemblies, components, or equipment prohibited by a
code, major or substantial changes between such
technical submissions which he or she identifies as
constituting a hazard to the public, which he or she
observes in the course of performing his or her duties.

(3) “Owner” means with respect to any real property
and of the following persons: (A) The holder of a
mortgage secured by such real property; (B) the holder,
directly or indirectly, of an equity interest in such real
property exceeding ten percent of the aggregate equity
interests in such real property; (C) the record owner of
such real property; or (D) the lessee of all or any portion
of such real property when the lease covers all of that
portion of such real property upon which the project is
being constructed, the lessee has significant approval
rights with respect to the project, and the lease, at the
time the construction of the project begins, has a
remaining term of not less than ten years.

(4) “Project” means the construction, enlargement, or
alteration of a building, other than a building exempted
by the provisions of section twelve of this article, which
has as its principal purpose human occupancy or
habitation.

(c) If the registered engineer or registered architect
who sealed the technical submissions which were
submitted to the building official at the time the
building permit was issued has not been employed to
furnish construction administration services at the time
such registered architect or registered engineer issued
such technical submissions, he or she shall note on such
technical submissions that he or she has not been so
employed. If he or she is not employed to furnish
construction administration services when construction
of the project begins, he or she shall file, not later than
thirty days after such construction begins, with the
board and with the building official, on a form prescribed by the board, a notice setting forth the names of the owner or owners known to him or her, the address of the project, and the name, if known to him or her, of the registered architect employed to perform construction administration services. If he or she believes that no registered architect or registered engineer has been so employed, he or she shall so state on the form. Any registered architect or registered engineer who fails to place the note on his or her technical submissions or to file such notice, as required by this paragraph, shall have violated the provisions of this chapter and shall be subject to discipline as set forth herein.

(d) If the board determines, with respect to a particular project or class of projects, that the public is adequately protected without the necessity of a registered architect or registered engineer performing construction administrative services, the board may waive the requirements of this section with respect to such project or class of projects.

§30-12-12. Exceptions.

Nothing in this article may be construed to prevent:

(a) Any of the activities that, apart from this exemption, would constitute the practice of architecture, if performed in connection with any of the following:

(1) A detached single family dwelling and any sheds, storage buildings and garages incidental thereto;

(2) A multi-family residential structure not in excess of three stories excluding any basement area;

(3) Farm buildings, including barns, silos, sheds or housing for farm equipment and machinery, livestock, poultry or storage, if such structures are designed to be occupied by no more than ten persons;

(4) Any alteration, renovation or remodeling of a building, if such alteration, renovation or remodeling does not affect structural or other safety features of the building or if the work contemplated by the design does not require the issuance of a permit under any appli-
cable building code;

(5) Preengineered buildings, including mobile classrooms purchased by county school boards; and

(6) A commercial structure which is to contain not more than seventy-six hundred square feet and not in excess of one story excluding any basement area.

(b) The preparation of any detailed or shop drawings required to be furnished by a contractor, or the administration of construction contracts by persons customarily engaged in contracting work.

c) The preparation of technical submissions or the administration of construction contracts by employees of a person or organization lawfully engaged in the practice of architecture when such employees are acting under the direct supervision of a registered architect.

d) Officers and employees of the United States of America from engaging in the practice of architecture as employees of said United States of America.

e) A partnership, corporation or other business entity from performing or holding itself out as able to perform any of the services involved in the practice of architecture, provided such practice is actually carried on under the direct supervision of architects registered in the state of West Virginia.

(f) A nonresident, who holds a certificate to practice architecture in the state in which he resides and in addition holds the certification issued by the national council of architectural registration boards, from agreeing to perform or holding herself or himself out as able to perform any of the professional services involved in the practice of architecture: Provided, That he or she may not perform any of the professional services involved in the practice of architecture until registered as hereinbefore provided and he or she notifies the board in writing if, prior to registration, he or she engages in any of the activities permitted by this paragraph.

(g) The practice of landscape architecture as defined in section two, article twenty-two of this code.
§30-12-13. Enforcement.

The board shall enforce the provisions of this article and of the rules adopted hereunder. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the attorney general or the appropriate prosecuting attorney, may file an action for the enforcement of such decision or order, including injunctive relief, in the circuit court of the county of residence of such person. After due hearing, the court shall order the enforcement of such decision or order, or any part thereof, if legally and properly made by the board and, where appropriate, injunctive relief.

§30-12-14. Penalties.

Whoever violates any provision of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for not more then twelve months, or both fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Sickles  
Clerk of the Senate

Donald T. Vogt  
Clerk of the House of Delegates

Paul Barnes  
President of the Senate

Robert C. Chellum  
Speaker of the House of Delegates

The within is approved this the 19th day of March 1990.

Mason Carpenter  
Governor