

BILL ANALYSIS

C.S.H.B. 3982
By: Rodriguez
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Landscape architects are regulated by the Texas Board of Architectural Examiners under a state practice act. Landscape architects undergo educational training and requirements similar to that of engineers and architects, including a five-year accredited degree, two years of professional internship, and passage of a three-day national exam.

Currently, the practice act for landscape architecture defines the practice of "landscape architecture," specifies to whom the term does not apply, and sets forth the circumstances under which a person is prohibited from accepting an assignment to engage in the practice of landscape architecture.

However, the scope of the current definition of "landscape architecture" and the acts prohibited under the practice act may capture and require the regulation of the flow of goods and services that do not pose a threat to the health, safety, or welfare of the public. Specifically, under the statute as written, nurserymen, gardeners, landscape designers, or landscape contractors may be subject to the landscape architecture licensure law when they are preparing planting plans or installing plants. Private residential or commercial property owners may be subject to landscape architecture licensure law when they are making plans, drawings, or specifications for personal use on the owner's property.

Finally, engineers, architects, and land surveyors may be subject to the landscape architecture licensure law when providing services for which they are licensed. All of these are arguably activities for which the state should allow equal access to specific sectors of the marketplace by unlicensed individuals, so as to provide the unregulated flow of goods and services that do not pose a threat to health, safety, or welfare.

C.S.H.B. 3982 amends the Occupations Code provision that exempts certain persons from the prohibition against engaging in the practice of landscape architecture in Texas without holding a landscape architect certificate of registration to allow the Texas Board of Architectural Examiners to more clearly determine violations of the practice of landscape architecture in Texas and to provide exemptions for activities associated with the practice of landscape architecture that do not pose a threat to the health, safety, or welfare of the public.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3982 amends the Occupations Code to include in the exemption of certain persons from the prohibition against engaging in the practice of landscape architecture in Texas without holding a landscape architect certificate of registration a person who is a nurseryman or gardener who is preparing a landscape planting plan, providing consultation or installing plant material for

a landscape planting project, or maintaining an existing landscape and specifies that the existing exemption for a landscape designer and landscape contractor applies to such a person who is preparing a landscape planting plan, providing consultation or installing plant material for a landscape planning project, or maintaining an existing project. The bill also specifies that the existing exemption for a person who is licensed in Texas to practice land surveying applies to such a person who is providing services for which the person is licensed.

C.S.H.B. 3982 removes from that exemption a person who: holds a license or permit issued by the Department of Agriculture, if that license or permit authorizes the person to engage in the business of selling nursery stock in Texas; is a building designer; is a golf course designer or planner involved in certain services if the dominant purpose of the service is golf course design or planning; makes a plan, drawing, or specification for certain types of residential buildings or projects; is primarily engaged in the business of park and recreation planning and involved in certain services if the dominant purpose of those services is park and recreation design and planning; is primarily engaged in maintaining an existing landscape; or is a volunteer acting under the direction of a governmental entity for a public purpose.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3982 exempts from the prohibition against a person engaging in the practice of landscape architecture without a landscape architect certificate of registration a nurseryman, gardener, landscape designer, or landscape contractor who is preparing a landscape planting plan, providing consultation or installing plant material for a landscape planting project, or maintaining an existing landscape, whereas the original exempts such a person who is preparing a landscape planting plan or installing plant material for a project. The substitute retains statutory exemptions, which are deleted in the original, for a person who is engaged in the location, arrangement, and design of any tangible objects and features that are incidental and necessary to landscape development, preservation, and aesthetic and functional enhancement for certain purposes; or makes a plan, drawing, or specification for property primarily used for farm, ranch, agriculture, wildlife management, or habitat restoration purposes.