



LICENSING NEWS

ARCHITECTURE • INTERIOR DESIGN • LANDSCAPE ARCHITECTURE

NOVEMBER 2012

CHAIRMAN'S COLUMN

Oversight and Participation

MOST EVERYONE ANSWERS TO SOMEONE. No matter what your job, or role, or function, someone is there to check up on you, offer advice, and make sure you're doing your job well.

In state government, it's no different: Every employee, every agency, and every elected official is watched over to ensure high performance and efficiency. For state agencies like the Texas Board of Architectural Examiners (TBAE), there are in fact several entities watching over agency operations to make sure the agency is serving the public the way it should.

The State Auditor's Office periodically reviews agency operations and administration. Their most recent review and final report occurred in December 2011. TBAE also regularly reports to a handful of House and Senate committees during each legislative session—and even during the interim between sessions.

Perhaps the best known oversight agency throughout the state is the [Sunset Advisory Commission of Texas](#). In 1977, the Texas Legislature enacted the Sunset Law to provide for the periodic review of the efficiency and effectiveness of state agency operations and policies. About 130 state agencies are subject to the Texas Sunset Act, and TBAE is one of those agencies. This is the year that TBAE is undergoing the thorough review, as we do approximately every ten or twelve years. After more than a year of staff meetings, information requests, Q and A sessions, stakeholder surveys, and field trips, [the Sunset Commission has released its staff report](#).

The just released staff report represents another key step in the overall Sunset review process [as outlined in a flowchart](#).

The report suggests many changes, big and small, regarding how TBAE operates. The next important step in the process consists of a public hearing that the Commission conducts in Austin. After the public hearing, the Commission will make a final recommendation on the status of the agency to the Texas Legislature. At that point the Legislature will consider all the recommendations and craft a bill incorporating some or all of the ideas presented. If you have an opinion on any of the Sunset staff recommendations (highlights of which appear below), you may wish to participate in the process. The Sunset Commission will hold a public hearing on the recommendations on November 13 in Austin.

Stay tuned to [the TBAE Web site](#) for news and updates on the Sunset process and other legislative events.

Highlights of the Sunset Advisory Commission's recommendations to the Texas Legislature:

- Continue the agency until the next Sunset review of [the Texas Department of Licensing and Regulation \(TDLR\)](#).
- During next Sunset review, consider consolidation of TBAE (and TBPE) with TDLR.
- Deregulate Registered Interior Designers (RIDs); remove RID representative on Board and replace with a second landscape architect member.
- Continue the Self-Directed, Semi-Independent program (SDSI), under which TBAE and other agencies operate, and make the program's Sunset date the same as each SDSI agency's Sunset date.

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No Surprises Here—No Increase in Renewal Fees this Year

Like most businesses, we at TBAE look at our budgeting each year. While most state agencies budget according to the biennial legislative schedule, our Board and staff enjoy the flexibility to tweak and modify our budgets annually and adjust to events just that much more quickly.

The only down side to the annual budget cycle is that, as Executive Director, I must review the numbers twice as often as an appropriated agency chief, and look everywhere I can for help in making everything work within the current budget. Actually, I look at our budget much more frequently than that. After all, TBAE does not have the security of an appropriation.

Each year, I revisit a challenge I've set for myself: How many years can I go without raising renewal fees?

Luckily, it appears a renewal fee increase won't be necessary this year. Despite the lingering economic woes, renewals in fiscal year 2013 will remain the same as in 2012. In fact, the most recent renewal fee change was in 2007—and that was a decrease, not an increase. I'm proud to note that as of 2013, TBAE will have a nine-year streak without a renewal fee increase. We are proactively looking into the future to consider opportunities to maximize our resources and to make changes that save everyone money.

We're proud that we are able to keep your fees as low as possible, all the while sending about 60 percent of agency

revenues along to the State's general fund and using the remaining 40 percent to fund our operations—salaries, rent, postage, electricity, and the like. TBAE Board Members and staff work hard to run an efficient ship, and we're proud to see it paying off for our registrants. A significant part of this efficiency is due to TBAE registrants themselves; a large portion of payments are made online, which is a huge saver of time and money.

Also on the topic of fees, close observers may have noticed that earlier this year the Board authorized the collection of a \$30 fee for business/firm registration. The business registration project has existed for many years now, and has been simple and free of charge since day one. So while the new fee is authorized, we've made the decision to refrain from charging that fee for the time being, while we work out some operational details and communicate the change fully to our stakeholders. The business registration transition from paper to electronic is on schedule to go live soon.

It has been nine years without a fee increase, so let's see how much longer we can keep this trend going! Collectively, we can work towards this goal. We'll continue to stay lean and efficient, in hopes of staying away from your piggy bank.



A handwritten signature in black ink that reads "Cathy L. Hendricks".

Cathy L. Hendricks
RID/ASID/IIDA
Executive Director

Chairman's Column

Continued from page 1

- Require that newly registering architects pay the same \$200 professional fee upon initial licensure that newly registering RIDs and Landscape Architects currently pay.
- Require fingerprint-based criminal history background checks of TBAE registrants, rather than the name-based background checks currently performed; will require each registrant to pay a one-time fee (currently \$42).
- Require the agency to remit all administrative penalties collected to the state's General Revenue Fund.

This is an important process that is underway with an outcome that could affect the future of TBAE.



A handwritten signature in black ink that reads "Alfred Vidaurri, Jr.".

Alfred Vidaurri, Jr.
AIA, AICP
Chair

A Helpful Reminder About PSPA

In the spring of 2009, TBAE first wrote in this newsletter about an important law that seems to fly under the radar of the unwary: the Professional Services Procurement Act (PSPA), and the TBAE regulations that implement it.

In order to refresh those who are aware of the PSPA and to inform those who remain unaware, let's return to the topic of what the PSPA and TBAE rules say, why they say that, and how to avoid violating them.

The crux of the PSPA (and TBAE rules) is that a Texas public entity must first select the most highly qualified and competent design professional for a public project, and negotiate price second. That is, a city council or school board may not inquire as to price or cost information, and a design professional may not provide it, until after the public entity selects that design professional. Price and cost information may not be given in response to a Request for Proposal, during a presentation, or otherwise—not until the public entity selects a design professional or a design team based exclusively on qualifications and competency. Once an initial design team selection is made, the public entity and that design team then will negotiate a price. If no agreement can be reached, the public entity simply ends negotiations with the initial team and begins negotiations with the team which was, based on competence and qualifications, the next most qualified. And so on until an agreement is reached.

The PSPA exists in order to ensure that public projects are designed by professionals selected primarily for their competence to do the work, and only secondarily based on cost. The emergency clause from the 1971 PSPA legislation lays out the rationale plainly, and perhaps with some barbed humor:

"...the selection of certified public accountants, architects, physicians, optometrists, surgeons and professional engineers on the basis of the lowest bid places a

premium on incompetence and is the most likely procedure for selecting the least able or qualified and most incompetent practitioner..."

- HB 76, 62nd Texas Legislature, effective March 30, 1971

The Texas legislature has made it very clear that contracts for professional services are to be awarded based on competency and qualifications. In order to achieve this result, it has directed TBAE to monitor bidding practices of registrants and, when appropriate, commence enforcement activities. So remember: if a public entity asks you for cost, price, or fee information, they shouldn't be doing that—and you shouldn't answer—directly or indirectly.

PSPA highlights: A survival guide

- Applies to projects to be built with state or local public funds, including: schools, city offices, public parks, etc.
- TBAE rules implementing the PSPA are 1.147 (for architects) and 3.147 (for landscape architects).
- Texas architects and landscape architects are subject to the PSPA; RIDs are not.
- Never include a dollar amount in verbal presentations, slide shows, or written materials prior to selection by the public entity. This includes such statements as "...save up to \$XX,XXX" or giving other information from which specific price and cost for proposed professional services can be derived.
- If a public entity asks for price or cost information, simply inform them that you're legally prohibited from providing such information—and so are all other design firms—until one is selected by the public entity. TBAE can answer questions for the public entity or your design firm if you're in doubt, so don't hesitate to call 512-305-9000 for help. One call could keep your firm out of trouble.



Tony Whitt
Continuing Education Coordinator

Continuing Education (CE) Tips for the Coming Year

- 12 hours per year required, all HSW just like before.
- Starting in January, 2013, the CE reporting period is the calendar year (January 1 to December 31), not your renewal period (which is based on your birth month); so starting now, simply keep all your documentation for each calendar year in a folder and have it ready in case you are audited.

- Your renewal period won't change—so you'll still renew by the end of your birth month each year. Only the CE reporting period has changed to calendar year.
- Use our handy [new online tool to walk you through renewing in 2013 and even 2014.](#)
- Up to four hours (previously three hours) can be self-study.
- The definition of structured study has not changed. Nor has the definition of self-study, the requirement for one hour of barrier-free study, or the requirement for one hour of sustainable or energy-efficient study.
- Read more information on our thorough [Continuing Education FAQ](#) or the [Continuing Education Requirements page.](#)

Contact Tony Whitt directly about continuing education issues!

PHONE: **512-305-8528** • EMAIL: ce@tbae.state.tx.us

For the latest news and updates, visit:
www.tbae.state.tx.us

NCIDQ Exam Goes Electronic in 2013

Sections 1 and 2 of the NCIDQ exam—the multiple choice sections—will be delivered to examinees in both traditional paper-and-pencil format and via computer starting in 2013, according to NCIDQ. After the final 2013 exam administration, those sections will be available via computer only.

Section 3, the practicum, will remain unchanged from its current paper-and-pencil format.

NCIDQ has provided several helpful resources on its Web site, some of the most useful of which are:

- [NCIDQ's initial press release and accompanying flyer](#)
- [July 16, 2012 press release](#)
- [Flowchart: How will the changes affect you?](#)

NCIDQ urges candidates to [stay tuned to their Web site](#) for further information, and of course we at TBAE will help spread word of important developments as well.

www.tbae.state.tx.us

Disciplinary Action

The following enforcement cases were decided during TBAE Board meetings in May and August, 2012. Each case is based on the applicable rule in effect at the time of the violation, and was considered by Enforcement staff and the Board in light of its unique facts. Individual rules may have changed between the time a violation occurs and the time the case is publicized.

In order to ensure compliance with continuing education responsibilities TBAE staff audits 10% of its registrants each year through a random selection process. All of the continuing education enforcement cases brought to the Board at the May and August, 2012 meetings stem from the random audit program. The cases reflect the most common violations: (1) failing to complete adequate continuing education hours during a program year, (2) failing to maintain continuing education records and verification of participation in CE activities for a period of five years, (3) falsely certifying at the time of renewal compliance with continuing education responsibilities, and (4) failing to respond to a request for information within 30 days. Each infraction is subject to a standard administrative penalty.

May 2012 Board Meeting

Continuing Education Cases

Shawn William Massock

Austin, Texas

- Failure to maintain adequate records of CE activity for a period of 5 years – \$500.00

Anthony Lovell Alexander

Hurst, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Richard Senelly

Trophy Club, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00
- Failing to respond to request for information within 30 days – \$250.00

Robert Atwood

Humble, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00
- Failing to respond to request for information within 30 days – \$250.00

Marley Porter

Horseshoe Bay, Texas

- Failure to maintain adequate records of CE activity for a period of 5 years – \$500

Xian Bing Wu

Shenzhen, China

- Failure to complete CE responsibilities during program year – \$500.00

Arturo Griego

Austin, Texas

- Failure to maintain adequate records of CE activities for a period of 5 years – \$500.00

David E. Schroeder

Alpharetta, Georgia

- Failure to complete CE responsibilities during program year – \$500.00
- Failing to respond to request for information within 30 days – \$250.00

Susan Jo Spears

Midland, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Everett Lowell Fly

San Antonio, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

James Foster Huff

San Antonio, Texas

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Ding Yuan

Houston, Texas

- Failing to respond to request for information within 30 days – \$250.00

TDLR Referral

Kimberley Hogan

Dallas, Texas

- Failure to submit plans to Texas Department of Licensing and Regulation for accessibility review within 20 days of issuance – \$600.00

August, 2012 Board Meeting

Continuing Education cases

Philip Solomon

San Antonio, Texas

- Failure to complete CE responsibilities during program year – \$500.00

Peter Wilson**Austin, Texas**

- Failure to complete CE responsibilities during program year – \$500.00

David Jackson Pickens**Richardson, Texas**

- Failure to complete CE responsibilities during program year – \$500.00

Eugene Lee Hunt**Scottsdale, AZ**

- Failure to maintain adequate records of CE activities for a period of 5 years – \$500.00

Frank Arthur Butler**Dallas, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Fulgencio C. Levrier**Southlake, Texas**

- Failure to complete CE responsibilities during program year – \$500.00

John Vincent Burt**Plano, Texas**

- Failure to maintain adequate records of CE activities for a period of 5 years – \$500.00

Jerry B. Flemons**Allen, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00
- Failing to respond to two requests for information within 30 days – \$500.00

Jack Allen Atkins**Dallas, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00
- Failing to respond to request for information within 30 days – \$250.00

Glenn Hooper**Lancaster, Texas**

- Failing to respond to request for information within 30 days – \$250.00

Stephanie Phares**Houston, Texas**

- Failure to complete CE responsibilities during program year – \$500.00

Sandra Rogers**Hewitt, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Timothy Guedry**Dallas, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Reporting completion of CE responsibilities in order to renew registration – \$700.00

Robbin G. Hodgkins**Houston, Texas**

- Failure to complete CE responsibilities during program year – \$500.00
- Failing to respond to request for information within 30 days – \$250.00

TDLR Referral**Phillip Shepherd****Dallas, Texas**

- Failure to submit plans to Texas Department of Licensing and Regulation for accessibility review within 20 days of issuance – \$2500.00 penalty, mandatory attendance at the TDLR Accessibility Academy and TBAE's online CE course.

Update on a Previous Disciplinary Action

In our fall, 2010 issue of *Licensing News*, TBAE reported that the Board had assessed a \$3,500.00 penalty upon Houston architect Richard Makover for failing to properly stamp drawings which he issued. Board rule 1.103 requires that an architect “conspicuously” stamp all architectural plans or specifications which are issued for purposes other than regulatory approval, permitting or construction with the statement “not for regulatory approval, permitting, or construction.” This is in addition to making sure that the architect’s name and the date of issuance are on the documents.

Mr. Makover failed to properly stamp plans and asserted that he was not required to because (a) the plans were for a single family residence which was exempt from the Architects’ Practice Act and (b) he never represented himself to be an architect to the homeowners but, rather,

“was acting as a draftsman” employed by a nonregistrant. The Board issued its Order in October, 2010 and held that an architect “must always comply with the legal duties and obligations established by the Architects’ Practice Act and Board rules.” This means that the Architects’ Practice Act and Board rules apply to all professional activities undertaken by a registrant even when working on “exempt” projects and that by merely not referring to oneself as an “architect,” or “landscape architect,” or “Registered Interior Designer” does not remove a person from the responsibilities which accompany professional practice.

The case description in the Fall 2011 newsletter noted that the Board Order was pending a motion for rehearing. Mr. Makover’s motion for rehearing was denied, and his subsequent appeal was dismissed by the Travis County District Court. Therefore, the Board’s 2010 Order is final and fully effective.



TEXAS Board of Architectural Examiners

Architects ▪ Interior Designers ▪ Landscape Architects

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Registrants, please encourage your interns to sign up for the TBAE list serve for important news and updates.

Change of Address

Please make sure that we have your current mailing and email address so we may send your renewal notice to you in a timely fashion. You may update your own record by logging in to your online account on our Web site, www.tbae.state.tx.us. You can also mail or fax **512.305.8900** the address change along with your signature. We will send renewal reminders to registrants at the e-mail address on file with TBAE, so be sure to keep your valid and unique email address updated.

Upcoming Board Meetings

- January 31, 2013
- June 12 or 14 (TBD), 2013
- August 22, 2013
- October 24, 2013

EXECUTIVE DIRECTOR

Cathy L. Hendricks, RID/ASID/IIDA

BOARD MEMBERS

Alfred Vidaurri Jr., AIA, AICP

Chair, Architect Member; Term ends 1/31/15

Corbett "Chase" Bearden

Vice-Chair, Public Member; Term ends 1/31/15

Sonya B. Odell

Secretary-Treasurer, Registered Interior Designer Member; Term ends 1/31/17

Chuck Anastos, AIA – Architect Member; Term ends 1/31/13

Debra Dockery, AIA – Architect Member; Term ends 1/31/17

H.L. "Bert" Mijares, AIA – Architect Member; Term ends 1/31/15

Paula Ann Miller – Public Member; Term ends 1/31/17

Brandon Pinson – Public Member; Term ends 1/31/13

Diane Steinbrueck, RLA – Landscape Architect Member; Term ends 1/31/13

The mission of the Texas Board of Architectural Examiners is to protect the public health, safety, and welfare through the regulation of the practice of the professions of architecture, landscape architecture, and interior design.

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