

MINUTES

BOARD MEETING

CALIFORNIA ARCHITECTS BOARD

July 28, 2016

Sacramento and Various Teleconference Locations

A. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM

Board President, Jon Alan Baker called the meeting to order at 2:03 p.m. and Board Secretary, Sylvia Kwan called roll.

Board Members Present

Jon Alan Baker, President
Matthew McGuinness, Vice President
Sylvia Kwan, Secretary
Denise Campos
Tian Feng
Pasqual Gutierrez
Ebony Lewis
Robert C. Pearman, Jr.
Nilza Serrano
Barry Williams

Guests Present

Mark Christian, Director of Legislative Affairs, The American Institute of Architects, California Council (AIACC)
Kurt Cooknick, Director of Regulation and Practice, AIACC
Yeaphana LaMarr, Legislative Analyst, Division of Legislative & Regulatory Review, Department of Consumer Affairs (DCA)
Linda Panattoni, Legislative Advocate, California Legislative Coalition for Interior Design (CLCID)
Neeraj Paul

Staff Present

Doug McCauley, Executive Officer
Marcus Reinhardt, Program Manager Examination/Licensing
Trish Rodriguez, Program Manager Landscape Architects Technical Committee
Mel Knox, Administration Analyst
Kristin Walker, Enforcement Analyst
Robert Carter, Architect Consultant
Rebecca Bon, Staff Counsel, DCA
Shela Barker, Attorney, DCA

Six members of the Board present constitute a quorum. There being ten present at the time of roll, a quorum was established.

B. PUBLIC COMMENT ON ITEMS NOT ON AGENDA

There were no comments from the public.

C. DISCUSS AND POSSIBLE ACTION ON RECOMMENDATION CONCERNING SENATE BILL 1132 (GALGIANI) [ARCHITECTS-IN-TRAINING] AND THE AMERICAN INSTITUTE OF ARCHITECTS, CALIFORNIA COUNCIL'S ARCHITECT-IN-TRAINING TITLE CHANGE PROPOSAL

Doug McCauley reminded the Board that, at the June 9, 2016, meeting, it approved a motion to oppose Senate Bill (SB) 1132 unless sufficiently amended to provide more detail as to implementation; specifically, enforcement-related implementation details. Mr. McCauley informed that Board President Baker appointed a working group consisting of members Matthew McGuinness, Pasqual Gutierrez, and Ms. Kwan to review possible amendments to the bill and make a recommendation to the Board. He added that representatives from AIACC were invited to participate with the group. Mr. McCauley reported that staff conducted additional research in preparation for the working group meeting, including the review of title provisions for three large states: Florida, New York, and Texas. In addition, he reported that staff analyzed the provisions for all states that authorize the use of a special title for candidates. Mr. McCauley noted that the most common features of such title provisions are: 1) possession of a professional degree in architecture; 2) current enrollment and active participation in the Architectural Experience Program (AXP); 3) employment under the responsible control of a licensed architect; and 4) the title may only be used in conjunction with such employment. He indicated that these features are largely consistent with current National Council of Architectural Registration Boards (NCARB) Model Law. Mr. McCauley also reported that four potential models that could be specified in SB 1132 were identified by staff and considered by the working group: 1) "Firm" - would allow firms to authorize the use of the title; 2) "Regulatory" - would establish an active role for the Board; 3) "NCARB" - would be based on current NCARB Model Law; and 4) "Candidate" - would authorize all active candidates in the examination process to use the title. He reported that the working group ultimately recommended that SB 1132 be amended to: 1) authorize individuals who are actively participating in AXP to use the title "architect-in-training," but no other abbreviations or derivatives of that title; 2) prohibit the use of the title to independently offer or provide services to the public; 3) allow the Board to disclose an individual's authorization to use the title to the public; 4) delineate penalty provisions for misuse of the title; and 5) include a sunset provision. Mr. McCauley then advised the Board of several options concerning SB 1132: 1) take a support position; 2) take an oppose position; 3) maintain current oppose unless amended position; 4) support with possible amendment; or 5) take a neutral/watch position. He opined a neutral/watch position to be most appropriate and practical for the Board.

Mr. McGuinness, Chair of the working group, informed the Board that the group's recommendation contains the least potential for enforcement and monitoring problems. Mr. McCauley explained each of the group's proposed amendments to SB 1132, while Mr. Gutierrez provided the Board with a brief overview of how the group arrived at each of those proposed amendments as reflected in attachment six of Agenda Item C.

Neeraj Paul asked if under the proposed amendment she would be able to use the Architect-in-Training title once she begins AXP even though her degree is not National Architectural Accrediting Board-accredited. Mr. McCauley answered in the affirmative and explained that the

type of degree, or even whether one has no degree at all, is irrelevant; the trigger for use of Architect-in-Training title entirely depends on whether a candidate is enrolled in AXP.

Mr. Baker asked whether a candidate must discontinue use of the Architect-in-Training title once the number of required AXP hours has been completed. Mr. McCauley answered in the affirmative; the candidate will no longer be able to use the title once AXP has concluded for that individual. Mr. Baker asked whether the working group expressed concern about the potential for an individual to intentionally delay AXP progress in an effort to extend his or her eligibility to use the Architect-in-Training title. Messrs. McCauley and McGuinness noted some concern about the potential for individuals to engage in such questionable behavior, but added that the risk was deemed minimal. Mr. Gutierrez explained why the working group found it appropriate to link the use of the Architect-in-Training title to the AXP. Tian Feng asked if the Board will be responsible for enforcing the use of the title, to which Mr. McCauley answered in the affirmative. Nilza Serrano asked about the time limit for one's use of the Architect-in-Training title, to which Mr. Baker replied that the use of the title is dependent on the time it takes for one to accrue 3,740 hours of AXP credit. Ms. Serrano also inquired about who will monitor the program to ensure that Architects-in-Training are compliant and that the title is properly used. Mr. Baker noted that the proposed framework provided by the working group does not specify whether use of the title is individual-driven, firm-driven, or regulatory-driven; however, in each case, the Board will be required to disclose information to the public upon request, and there are penalties for misuse of the title. Mr. McCauley explained that the only monitoring mechanism will be through the enforcement process, which will impact the Board's Enforcement Unit. He informed that when the Board receives complaints from consumers, the Board is obligated to investigate. Mr. McCauley stated that the Board does not know whether the proposed framework is the perfect solution for a particular problem because nothing yet has been vetted with data. He also indicated that the Board does not know how many candidates will use the title, and, therefore, cannot estimate the impact of the framework on the Enforcement Unit. Ms. Serrano asked how the proposed framework for use of the Architect-in-Training title will benefit the consumer. Mr. McCauley explained that an Architect-in-Training should not interface with consumers because Architects-in-Training would be prohibited from using the title to market their services, even in exempt areas of practice. He stated that he could not identify how extensive the consumer benefit would be. Robert C. Pearman, Jr. asked about firms' control of the use of the Architect-in-Training title and communication to the public. Mr. McCauley indicated that, presumably, firms will control what an Architect-in-Training communicates to the public. Mr. Pearman also asked if there is a requirement for individuals or firms to report to the Board for purposes of maintaining a roster of candidates who use the title. Mr. McCauley confirmed there is no such requirement.

In response to Ms. Serrano's questions, Mr. Gutierrez added that credit for hours worked in AXP may only be claimed in six-month increments. He explained how the framework encourages professional mentorship, and how any monitoring component will be linked directly to the Board's enforcement activities. Mr. Gutierrez also explained that benefits to the consumer may include: 1) recognition for emerging professionals, and 2) identification of those who are completely engaged in their pathway toward licensure. Mr. Feng opined that professional encouragement and recognition is more about individual benefit than it is about consumer benefit. Mr. Baker observed that the recommended framework does not contain a mechanism for work authorization by employer, nor does it address whether the Board must keep Architect-in-Training records of any kind for enforcement purposes. Mr. McCauley explained that the working group attempted to streamline the framework as much as possible in an effort to avoid

its integration into the Board's business management system; changes to the system would present significant challenges. Mr. Baker asked if one may simply begin using the Architect-in-Training title when he or she feels the criteria has been met. Mr. McCauley answered affirmatively and advised that the Board has no statutory authority to regulate firms or take action if a firm did anything inappropriate with the title. Mr. Gutierrez added that regulation is not needed for this title to exist, but that violations may result in administrative action including, but not limited to, citation, discipline, or denial of a license.

Mr. Baker asked if the Board may legally enable people to use the Architect-in-Training title without monitoring its usage outside of responding to complaints. He expressed concern that the Board may violate its obligation to protect consumers in the absence of a way to monitor the title's use. Rebecca Bon advised the Board that it is obligated to enforce the laws and regulations in the Architects Practice Act (Act). Ms. Bon also advised the Board that it cannot ignore certain aspects of the Act, and clarified that the Legislature is considering an enactment to create the title, not the Board. Mr. Baker asked if the Board can legally implement the proposed framework, to which Ms. Bon advised that, should the proposed framework be enacted, the Board must do so.

Ms. Serrano expressed her view that the average consumer will not know the difference between an architect and a person working under architect supervision. Ebony Lewis agreed with Ms. Serrano's comments and stated that, as a consumer, she would view an Architect-in-Training as a person who is in training, on the pathway to licensure, and is able to practice architecture. Mr. Gutierrez stated that the Board will not pursue architects to see if they are meeting obligations; the Board will only respond to misbehavior when complaints are filed. He clarified that an Architect-in-Training could not practice architecture, but, instead, executes tasks assigned to him or her by a licensed architect. An Architect-in-Training, Mr. Gutierrez added, may only use the title for recognition.

Mr. Baker expressed his desire to know that the Board, as a consumer protection board, may regulate the Architect-in-Training title. Mr. McCauley opined that the Board will need clear statutory authority and subsequent regulation to regulate the title (i.e., require candidates to complete a registration form which will be submitted to the Board for tracking and processing purposes). Ms. Bon concurred. Mr. Baker asked if the Board should engage in monitoring and tracking of Architects-in-Training in the absence of legislative authority and direction. Mr. McCauley opined that if a monitoring and tracking component is desired by the Board then it would need to be specified in the bill. He explained that the Board could require mandates (e.g., registration forms and fees) but the Board must decide whether it should do so and how regulatory it should be. Mr. McCauley noted that the Working Group intentionally structured the framework to make it as least impactful on the Board's operations as possible. Denise Campos reminded the Board that 12 other states use the title, and that the words "in-Training" communicate to the consumer that a person is not yet an architect. Mr. McCauley advised the Board that Business and Professions Code (BPC) section 5536 (Confusingly Similar standard) is the core provision the Board will observe when considering enforcement action for misuse of the title.

Mr. Baker acknowledged the opinions of the interior designer community. Linda Panattoni conveyed to the Board CLCID's concerns. Ms. Panattoni desired to know what demand is present that creates a need for an Architect-in-Training title. She opined that any additional title will create more confusion with interior design professionals, consumers, building officials, and

other agencies. Ms. Panattoni opined that no benefit to the consumer is apparent. She also explained that use of the term “Architect” in any way is unlawful without the proper education, experience, and examination to do so. Ms. Panattoni noted that an Architect-in-Training title will dilute the degree of professionalism in the interior designer community.

Mr. Feng stated he is not yet convinced that there is a direct consumer benefit to creating the Architect-in-Training title. Mr. McGuinness explained that the working group found that professional mentorship is endangered, and that the recommended framework is one step toward cultivating an environment for professional mentorship. He reported that consumer benefit was not a major theme of the working group’s discussions. Ms. Kwan reported that the working group considered four potential models that could be specified in SB 1132; each of which, she recalled, were imperfect. Ms. Kwan explained that the group, therefore, developed the proposed framework using a hybrid model and felt comfortable with the inclusion of a Sunset provision for the Board, at a future date, to assess whether use of the Architect-in-Training title is a success or failure. Mr. Gutierrez added that the proposed framework supports the Board’s position on Integrated Path to Architectural Licensure, and promotes licensure by identifying individuals who are dedicated professionals.

- **Pasqual Gutierrez moved to support SB 1132 (Galgiani) if amended with the following proposed language regarding use of the Architect-in-Training title based on the working group’s recommended framework:**
 - a) **A person may use the title “architect-in-training” while enrolled in the NCARB AXP as specified in Division 2 of Title 16 of the California Code of Regulations.**
 - b) **No abbreviations or derivatives of the title “architect-in-training” may be used.**
 - c) **A person may not use the title “architect-in-training” to independently offer or provide services to the public.**
 - d) **Notwithstanding any other provision, the Board shall disclose a person’s authorization to use the title “architect-in-training” to members of the public upon request.**
 - e) **Use of the title “architect-in-training” in violation of this section may constitute unprofessional conduct and subject the user to administrative action including, but not limited to, citation, discipline, or denial of a license.**
 - f) **This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.**

Denise Campos seconded the motion.

Mr. Baker questioned whether BPC 5500.2 is an appropriate reference for the proposed framework. Mr. McCauley indicated that the framework’s reference will be adjusted, as needed and properly integrated into existing law.

Members Campos, Feng, Gutierrez, Kwan, Lewis, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 10-0.

D. FINDING OF NECESSITY

Shela Barker informed the Board that, per California Government Code section 11125.4(c), California's Bagley-Keene Open Meeting Act requires the Board to make a finding regarding the necessity of holding a Special Meeting and the waiver of the usual 10-days' advance notice requirement for board meetings. Ms. Barker explained that specific facts must be provided to support the finding.

- **Nilza Serrano moved to find that: 1) providing 10-days' advance notice of this meeting would pose a substantial hardship on the Board in that the Board would be deprived of the timely ability to discuss, deliberate and take a position on pending litigation that could substantially impact the Board and its operations; and 2) the Board's next meeting is not set until September 29, 2016, and the matter to be discussed and deliberated upon was not known prior to the last Board meeting on June 9, 2016.**

Robert C. Pearman, Jr. seconded the motion.

Members Campos, Feng, Gutierrez, Kwan, Lewis, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 10-0.

E. CLOSED SESSION

The Board went into closed session to confer with legal counsel on litigation regarding *Marie Lundin vs. California Architects Board, et al.*, Department of Fair Employment and Housing, Case No. 585824-164724.

F. ADJOURNMENT

The meeting adjourned at 4:10 p.m.