2005 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

# Colorado State Board of Examiners of Architects

October 14, 2005

# STATE OF COLORADO

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Bill Owens
Governor

October 14, 2005

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado State Board of Examiners of Architects (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2006 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….

The report discusses the question of whether there is a need for the regulation provided under Article 4 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Tambor Williams

Tambor Williams
Executive Director

# 2005 Sunset Review
# Colorado State Board of Examiners of Architects

*Department of Regulatory Agencies*

*Bill Owens*
*Governor*

*Tambor Williams*
*Executive Director*

## *Executive Summary*

## Quick Facts

**What is Regulated?** Architects.

**Who is Regulated?** In fiscal year 03-04, there were 6,416 active licensees:

- 244 new licensees
- 2,440 license renewals

**How is it Regulated?** The State Board of Examiners of Architects (Board) is a Type I board housed in the Division of Registrations of the Department of Regulatory Agencies. In practice, the Board licenses architects. This involves processing and evaluating applications from prospective licensees, enforcing minimum standards of practice as defined by law, and disciplining those in violation of the law.

**What Does it Cost?** The fiscal year 03-04 expenditure to oversee this program was $83,237, and there were 1.2 FTE associated with this program.

In 2005, license fees were $150 for initial licensure by examination, $100 for initial licensure by endorsement and $37 for two-year renewals.

**What Disciplinary Activity is There?** Between fiscal years 99-00 and 03-04, the Board's disciplinary proceedings consisted of:

| | |
|---|---|
| Complaints Filed | 105 |
| Revocations | 1 |
| Suspensions | 5 |
| Letters of Admonition | 8 |
| Fines | 51 |
| Cease and Desist Orders | 4 |
| Dismissed | 32 |
| Other | 7 |

**Where Do I Get the Full Report?** The full sunset review can be found on the internet at: http://www.dora.state.co.us/opr/oprpublications.htm

## Key Recommendations

**Continue the regulation of architects until 2013.**
Architects design the buildings in which people live, work and play. Buildings can fail, and when they do, the results can be catastrophic, with damage ranging anywhere from poor air quality or mechanical malfunctions to structural collapse. Of all the professions involved in the construction of buildings, architects are uniquely positioned to oversee and coordinate the entire process to ensure that a given project results in a safe building.

**Improve governmental efficiency by combining the Board with the State Board of Licensure for Professional Engineers and Professional Land Surveyors.**
There have been very few serious complaints filed against Colorado-licensed architects. Between fiscal years 99-00 and 03-04, 59 percent of the cases reviewed by the Board involved lapsed licenses or practicing without a license. On only 13 occasions in five years was the professional expertise of the Board called upon to determine whether a practitioner had engaged in substandard practice. Only one of these cases resulted in a license revocation. Combining the Board with the State Board of Licensure for Professional Engineers and Professional Land Surveyors will result in greater administrative efficiencies and cost savings. Additionally, the newly created 13-member State Board of Licensure of the Technical Professions would allow all three regulated professions to coordinate policy, thereby providing more comprehensive regulation.

**Clarify that it is a violation of the practice act to engage in the practice of architecture without being a duly licensed architect**
The practice act implies that only those licensed as architects may engage in the practice of architecture, unless an exemption applies, but there is nothing in the practice act prohibiting the unlicensed practice of architecture or making such action a violation of the practice act upon which the Board may take action.

*…Key Recommendations Continued*

**Protect the title "licensed architect," rather than simply "architect."**
An individual may obtain a degree as an architect, but not seek licensure as an architect. The practice act defines "architect" as a person licensed by the Board and entitled to practice architecture. The practice act also makes it a misdemeanor for any person to advertise, represent or hold him/herself out as an architect. These provisions create problems for those who hold degrees in architecture, but do not practice as such. Since regulation of architects is premised on the practice of architecture, rather than the mere use of the title "architect," the practice act should be amended to protect the title "licensed architect." This will allow those who hold degrees in architecture, but who do not practice architecture, to legally identify themselves by the degree they have earned.

**Repeal from the grounds for discipline the requirement that licensees report to the Board other licensees who have violated the practice act.**
While licensees should be encouraged to report violations of the practice act to the Board, they should not be subject to discipline for failing to do so.

**Repeal from the grounds for discipline the prohibition against licensees providing clients and potential clients with gifts or payments to obtain work.**
This prohibition serves only to restrict the types of marketing practices architects may employ to secure work. The sunset criteria ask whether regulation serves to protect the public health, safety or welfare. It is difficult to see how the regulation of architects' marketing practices enhances public protection.

## Major Contacts Made In Researching the 2005 Sunset Review of the Board

American Council of Engineering Companies of Colorado
American Institutes of Architects – Colorado Chapter
Associated General Contractors
Colorado Association of Homebuilders
Colorado Division of Registrations
Colorado Fire Marshal's Association
Colorado Interior Design Coalition
Colorado Office of the Attorney General
Colorado State Board of Examiners of Architects
International Code Council – Colorado Chapter
Professional Engineers of Colorado
Professional Land Surveyors of Colorado

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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# Background

## The Sunset Process

The regulatory functions of the Colorado State Board of Examiners of Architects (Board) in accordance with Article 4 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2006, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations. During this review, the Board must demonstrate that there is still a need for the Board and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 40.

## Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board members, Board staff and officials with state and national professional associations and reviewed Board records and minutes, including complaint and disciplinary actions, Colorado statutes, Board rules and the laws of other states.

## Profile of the Profession

Architects provide professional design services to individuals and organizations planning construction projects. Architects may be involved in all phases of development, from initial discussions with the client through the entire construction process, or they may only participate in an isolated aspect of a given project.

In developing a project, the architect considers the client's objectives, requirements and budget. Pre-design services may include conducting feasibility and environmental impact studies, selecting a suitable building site and specifying the requirements that the ultimate design must satisfy.

After reaching agreement with the client on the project's scope, the architect develops and coordinates final construction plans that show the building's appearance and details for its construction. These detailed plans include the building's structural system; heating, ventilation and air-conditioning systems; electrical and plumbing systems; communications systems; and, possibly, landscape plans. Additionally, these plans must comply with any applicable building and fire codes to ensure the life safety of the completed project's occupants. Very often, various elements of these plans are prepared by other design professionals, such as engineers, interior designers and landscape architects.

Aside from their traditional role as designers, architects may also assist their clients in obtaining construction bids, selecting contractors, negotiating construction contracts and managing the overall construction process. This often requires the architect to visit the construction site to ensure that plans are followed, that the project remains on schedule, that specified materials are used, that the quality of the work being performed is acceptable and to resolve any issues that develop during the construction process.

In the end, the extent of a given architect's duties on a given construction project is determined by the architect's competencies and the contract with the client.

Most individuals pursuing careers as architects earn master's degrees in architecture, though some may cease their formal educations after earning bachelor's degrees in fields such as environmental design.

Colorado has one National Architectural Accrediting Board-accredited master's level architectural program at the University of Colorado at Denver. Additionally, the University of Colorado at Boulder offers a non-accredited bachelor's degree in environmental design.

All 50 states regulate architects, and all 50 require some combination of education, experience and passage of an examination as preconditions to licensure.

## *History of Regulation*

Colorado began regulating architects in 1909. In that year, the General Assembly created the five-member State Board of Examiners of Architects (Board), consisting entirely of architects. Licensure standards were established along several, distinct tracks. A license was granted upon application for those 1) with at least one year of experience; 2) holding an architect's license from another state; or 3) who were members of the American Institute of Architects. All others had to take and pass an examination to become licensed. The Board could revoke a license upon a unanimous finding that the architect was grossly incompetent, had constructed a building in a reckless manner or had acted dishonestly.

The original 1909 act also provided exemptions from licensure for draftsmen, students, clerks, superintendents and others acting under the instruction, control or supervision of a licensed architect. Additionally, a building of three stories or fewer did not need to be designed by a licensed architect.

In 1937, the General Assembly amended the definition of "architect" to speak in terms of natural persons only, and the three-story building exemption was restricted to buildings of not more than two stories.

Between 1937 and 1981, the architect practice act was repealed and re-enacted four times, with most changes occurring in the definition of the practice of architecture and the various exemptions from licensure. Other changes included the introduction of statutory language specifically excluding landscape architects and site planners from the practice of architecture, as well as a statutory directive to the Board to develop qualifying criteria and an examination.

In 1981, the Board's membership was expanded to include a licensed general contractor, as well as two additional public members. Additionally, the statutory exemptions were further restricted.

In 1988, the act was amended following a sunset review of the Board, and statutory qualifying criteria were made more specific by delineating a maximum number of years of education and experience required to sit for the examination.

Another sunset review of the Board was conducted in 1997, resulting in further statutory changes. For example, the General Assembly relieved the Board of needing to maintain a roster of licensed architects, but retained a requirement to annually notify licensees of disciplinary actions and rules changes. Additionally, the General Assembly granted the Board the authority to issue cease and desist orders and provided that an architect's stamp must be accompanied by a signature and a date to be valid.

Finally, in 2001, the act was amended to provide a specific exemption for interior designers. The exemption, established by House Bill 01-1153, defines the practice of interior design and requires interior designers working under the exemption to possess a degree, two to four years of experience, and to have passed the qualification examination promulgated by the National Council for Interior Design Qualification.

## *Legal Framework*

The architect practice act (Act) can be found at section 12-4-101, *et seq.*, Colorado Revised Statutes (C.R.S.).

Pursuant to section 12-4-102(5), C.R.S., the practice of architecture means:

> The performance of the professional services of planning and design of buildings, preparation of construction contract documents including working drawings and specifications for the construction of buildings, and the observation of construction pursuant to an agreement between an architect and any other person, but does not include the performance of the construction of buildings.

An architect's services may include investigations, evaluations, schematic and preliminary studies, designs, working drawings and specifications for construction and for the space within and surrounding the building(s) or structure(s); coordination of the work of technical and special consultants; compliance with generally applicable codes and regulations and assistance in the governmental review process; technical assistance in the preparation of bid documents and agreements between clients and contractors; contract administration and construction observation.

The Act also contains several exemptions from the practice of architecture, including:

- One-, two-, three- and four-unit dwellings;

- Garages, industrial buildings, offices, farm buildings and buildings for the marketing, storage or processing of farm products, and warehouses that do not exceed one story in height and that are not designed for occupancy by more than 10 people; and

- Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.

Additionally, the Act exempts employees of the federal government and licensed professional engineers.

Finally, the Act exempts interior designers involved in the preparation of interior design plans and specifications for interior finishes and nonstructural elements within and surrounding interior spaces of a building or structure of any size. To fall within the exemption, an interior designer must possess written documentation that the interior designer has graduated with a degree in interior design and has either two or four years of interior design experience, depending upon the institution that granted the degree, has satisfied the education and experience requirements of the National Council for Interior Design Qualification (NCIDQ) and has passed the NCIDQ's qualification examination.

While the practice of architecture has several exemptions, only individuals licensed as architects may use the title, “architect.”

The Act also creates the seven-member State Board of Examiners of Architects (Board) to enforce the Act. Members of the Board are appointed by the Governor and must include four licensed architects, two public members and one member who is a licensed general building contractor. Members of the Board are limited to serving two, four-year terms.

The Act empowers the Board to, among other things:

- Adopt rules to implement the Act;
- Examine and license qualified candidates;
- Conduct hearings;
- Discipline licensees; and
- Require every licensed architect to have a stamp.

To become a licensed architect in Colorado, a candidate must satisfy certain education, experience and examination requirements. The Act establishes four tracks for satisfying experience requirements, depending upon the education of the individual candidate:

- Candidates with master’s degrees from National Architectural Accrediting Board (NAAB)-accredited programs must obtain approximately three years of experience after their first year of school, and candidates with bachelor’s degrees from NAAB-accredited programs must obtain approximately three years of experience after their third year of school.

- Candidates with four-year architectural degrees from non-NAAB-accredited programs must obtain approximately five years of experience after their third year of school.

- Candidates with non-architectural degrees must obtain varying levels of experience, depending upon the degree held. Candidates with bachelor’s degrees in engineering, construction management or interior design must obtain seven years of experience after graduation. Candidates with any other type of bachelor’s degree must obtain eight years of experience after graduation. Candidates with any type of associate’s degree must obtain nine years of experience after graduation.

- Candidates without college degrees must obtain 10 years of experience.

The Board’s rules further delineate acceptable areas in which experience must be obtained and the amount of experience acceptable for each area. For example, candidates must obtain experience in areas including design and construction documents, contract administration and management and related activities.

Regardless of which track a candidate pursues to satisfy the education and experience requirements, all candidates must take and pass the National Council of Architectural Registration Boards' (NCARB's) Architect Registration Examination (ARE). The Act requires the licensure examination to be offered at least twice per year. As of July 1, 2005, Board rules stipulate that examinations and examination results are not subject to review or appeal.

A license to practice as an architect can also be obtained by endorsement. An applicant for licensure by endorsement must hold a license from a jurisdiction whose licensure requirements are substantially equivalent to Colorado's.

The Division of Registrations establishes license fees, and licenses are renewable every two years.

Only natural persons may be licensed as architects, but firms may use the term "architect" in their business names if a majority of the officers and directors, members or partners are licensed architects. Furthermore, any firm engaging in the practice of architecture must ensure that such practice is performed under the direct supervision of a licensed architect who is in responsible control of any plans, designs, drawings, specifications or reports.

Additionally, the firm must maintain an insurance policy of at least $75,000 per licensed architect, up to a maximum of $500,000, and the firm's organizing documents must specify agreement by all shareholders, members or partners that they share liability for all acts, errors and omissions of the employees, members and partners of the firm.

By rule, the Board has prescribed the design and use of architect stamps. Licensees sign, date and stamp drawings, specifications, reports or other professional work for which they have direct professional knowledge and responsible control. An architect is in responsible control when the architect:

- Personally makes architectural decisions, or personally reviews and approves proposed decisions prior to their implementation, including consideration of alternatives, whenever architectural decisions are made that could affect the life, health, property and welfare of the public; or

- Judges the validity and applicability of recommendations prior to their incorporation into the work.

Board rules also require architects to retain stamped, record sets of plans for three years.

Upon a finding of a violation of the Act or any of the rules promulgated thereunder, the Board may suspend, place on probation or revoke any license. Additionally, the Board may issue a letter of admonition, impose a fine or limit the practice of a licensee found to be in violation of the Act or the Board's rules. No fine may exceed $5,000, and all monies realized through the imposition of fines are credited to the state's General Fund.

Grounds for such disciplinary action include:

- Fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license;
- Any act or omission that fails to meet the generally accepted standards of practice which endangers life, health, property or the public welfare;
- Mental incompetency;
- Fraud or deceit in the practice of architecture;
- Affixing a seal to any document of which the architect was neither the author responsible nor in responsible control of preparation;
- Violation of or aiding and abetting in the violation of the Act or any Board rule;
- Conviction of or pleading guilty to a felony in Colorado or to any crime outside Colorado that would constitute a felony in Colorado;
- Use of false, deceptive or misleading advertising;
- Excessive use of alcohol or any habit-forming drug or controlled substance that results in the unfitness to practice architecture;
- Failure to report to the Board any architect known to have violated the Act or any Board rule;
- Making or offering to make a gift, donation, payment or other valuable consideration to influence a prospective or existing client regarding the employment of the architect;
- Failure to render adequate professional control of persons practicing architecture under the responsible control of the licensed architect; and
- Performing services beyond one's competency, training or education.

Board actions are subject to the review of the Colorado Court of Appeals.

## Program Description and Administration

The Colorado State Board of Examiners of Architects (Board) is administratively housed in the Department of Regulatory Agencies' (DORA's) Division of Registrations (Division). Table 1 illustrates, for the five fiscal years indicated, the Board's expenditures and the number of full-time equivalent (FTE) employees devoted to the Board by the Division.

**Table 1**

**Program Information**

| Fiscal Year | Total Program Expenditure | FTE |
|---|---|---|
| 99-00 | $79,389 | 2.3 |
| 00-01 | $85,502 | 2.3 |
| 01-02 | $97,118 | 2.3 |
| 02-03 | $72,058 | 1.2 |
| 03-04 | $83,237 | 1.2 |

The FTE allocated to the Board comprise 0.2 FTE General Professional VII (Program Director) and 1.0 FTE Administrative Assistant III. The Program Director oversees the day-to-day operations of the Board, while the Administrative Assistant provides general clerical support to the Program Director and the Board.

Note that prior to fiscal year 02-03, the Division allocated 2.3 FTE to the Board. In that year, however, the Division restructured itself, resulting in greater centralization of certain functions, such as licensing, for all boards and programs within the Division and fewer FTE devoted to individual boards and programs.

The Board consists of seven members: four licensed architects, two public members and one licensed general contractor. The Governor appoints all Board members, and members are limited to two, four-year terms.

The Board typically meets on the fourth Friday of January, March, May, July, September and the first Friday of December. Board meetings are generally well attended by Board members and members of the public occasionally attend.

### *Licensing*

As its name implies, the Board licenses architects. Towards this end, section 12-4-101, *et seq.*, Colorado Revised Statutes (C.R.S.), (Act) and the Board, through its rulemaking authority, have established certain education, experience and examination requirements that must be satisfied prior to the issuance of a license.

Table 2 illustrates, for fiscal years 99-00 through 03-04, the number of licenses issued via the examination route, the number issued by endorsement and the total number of active licenses.

**Table 2**

**Licensing Information**

| Fiscal Year | Number of Licenses | | | |
|---|---|---|---|---|
| | Exam | Endorsement | Renewal | Total Active |
| 99-00 | 77 | 264 | 2,744 | 5,890 |
| 00-01 | 81 | 243 | 2,667 | 6,214 |
| 01-02 | 79 | 205 | 2,229 | 6,376 |
| 02-03 | 80 | 196 | 3,332 | 6,467 |
| 03-04 | 74 | 170 | 2,440 | 6,416 |

Note that while the number of individuals obtaining a license by education, experience and examination has remained relatively constant over this period, the number of out-of-state architects seeking licensure in Colorado by endorsement has steadily decreased from a high of 264 in fiscal year 99-00, to 170 in fiscal year 03-04. The total number of active licensees, however, increased by approximately 500 during this same period.

Candidates seeking licensure by endorsement can follow one of two paths: direct application or by certification. In either case, the candidate must be licensed in another state and the candidate's qualifications must be substantially equivalent to those required by Colorado. Additionally, candidates must take and pass a 25-question, multiple-choice jurisprudence examination.

Direct application candidates must complete a Board-approved application form, provide documentation to verify licensure status in another jurisdiction, provide documentation to verify examination history, and pay the application fee of $150.

Candidates for licensure by endorsement may also pursue licensure by certification. The National Council of Architectural Registration Boards (NCARB) owns and administers the Architect Registration Examination (ARE), operates the Intern Development Program (IDP), and acts as a clearinghouse for licensed architects to provide verification of their education, experience and examination history. Thus, candidates pursuing licensure in Colorado by endorsement may also do so by NCARB certification. Candidates pursuing this path must complete the Board-approved application and pay the $100-application fee, but rather than providing verification of their license status in another jurisdiction or their examination history directly to the Board, they provide similar information to NCARB, which then provides the information to the Board.

Recall that the Act provides for initial licensure along two distinct paths:

- Education, experience and examination; or
- Experience and examination.

The first path can further be subdivided into those education programs that are accredited by the National Architectural Accrediting Board (NAAB) and those that are not. Generally, NAAB-accredited programs are professional/graduate level programs, while non-accredited programs are generally undergraduate programs.

In general, the higher the level of education attained, the less supervised experience necessary to qualify for licensure.

Alternatively, candidates may participate in NCARB's IDP, which has education and experience requirements that are substantially similar to Colorado's. Through IDP, NCARB tracks and records candidates' degrees and work experience. Once NCARB's minimums are satisfied, candidates are then approved to sit for the ARE. Thus, IDP candidates pursuing a license in Colorado can either apply directly to the Board prior to taking the ARE or after taking the ARE. In either case, NCARB sends the candidate's record and ARE scores to the Board.

Regardless of the path pursued for licensure by endorsement, all candidates must pay to the Board an application fee of $100.

## *Examinations*

The licensing examination used by Colorado, and by all 49 other states and most Canadian provinces, is NCARB's ARE. Nine divisions comprise the ARE. Table 3 depicts the divisions, types of questions posed and maximum time limits.

**Table 3**

**General Examination Information**

| Division | Number of Multiple-Choice Questions | Number of Vignettes Posed | Maximum Time Limit |
|---|---|---|---|
| Pre-Design | 105 | -- | 2.5 hours |
| General Structures | 85 | -- | 2.5 hours |
| Lateral Forces | 75 | -- | 2.0 hours |
| Mechanical & Electrical Systems | 105 | -- | 2.0 hours |
| Building Design/Materials & Methods | 105 | -- | 2.0 hours |
| Construction Documents & Services | 115 | -- | 3.5 hours |
| Site Planning | -- | 5 | 3.0 hours |
| Building Planning | -- | 2 | 5.0 hours |
| Building Technology | -- | 6 | 5.25 hours |

The three vignette divisions of the ARE present problems to examinees, who must then prepare drawings and other documents according to the instructions given. In this respect, these divisions resemble practical examinations.

All nine divisions are administered via computer. Beginning in January 2006, candidates will have five years in which to complete all nine divisions of the ARE.

Candidates may take any division of the ARE at any time and in any sequence. Candidates must pay a fee of $92 for each administration of each of the six multiple-choice divisions, and a fee of $143 for each administration of each of the graphic divisions. Thus, a candidate who passes all nine divisions on the first attempt would pay NCARB a total fee of $981.

NCARB has contracted with Thomson Prometric to consult on the development of, and to administer the ARE. Thomson Prometric maintains four test centers in Colorado: one each in Colorado Springs, Grand Junction, Greenwood Village and Longmont. Each is open Monday through Saturday. Candidates may schedule an administration of an ARE division a few days in advance, or if space is available, on a walk-in basis.

Table 4 illustrates pass rates for Colorado candidates in each of the nine divisions of the ARE and compares those rates to the overall national pass rates. Note that figures listed are for the calendar years indicated.

**Table 4**

**Examination Pass Rates by Division and Calendar year**

| Division | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | CO | U.S. | CO | U.S. | CO | U.S. | CO | U.S. | CO | U.S. |
| Pre-Design | 83 | 73 | 84 | 76 | 85 | 77 | 77 | 77 | 81 | 75 |
| General Structures | 80 | 76 | 73 | 76 | 73 | 77 | 76 | 73 | 78 | 73 |
| Lateral Forces | 89 | 89 | 93 | 90 | 94 | 93 | 91 | 92 | 84 | 77 |
| Mechanical & Electrical Systems | 83 | 78 | 81 | 73 | 74 | 74 | 76 | 74 | 72 | 67 |
| Building Design/Materials & Methods | 96 | 90 | 97 | 90 | 93 | 88 | 90 | 86 | 88 | 76 |
| Construction Documents & Services | 85 | 85 | 86 | 86 | 85 | 86 | 94 | 85 | 85 | 79 |
| Site Planning | 74 | 72 | 64 | 64 | 67 | 68 | 70 | 70 | 65 | 71 |
| Building Planning | 59 | 61 | 65 | 62 | 71 | 68 | 65 | 68 | 63 | 64 |
| Building Technology | 80 | 78 | 61 | 67 | 58 | 67 | 54 | 65 | 63 | 63 |

Colorado candidates do comparatively well on the ARE, since, with a few exceptions, Colorado pass rates are equal to or higher than national pass rates.

## *Complaints/Disciplinary Actions*

Finally, the Act charges the Board to receive and investigate complaints, and when violations are found to have occurred, to take disciplinary action. Table 5 illustrates, for the five years indicated, the number and nature of complaints received by the Board.

**Table 5**

**Complaint Information**

| Nature of Complaints | FY 99-00 | FY 00-01 | FY 01-02 | FY 02-03 | FY 03-04 |
|---|---|---|---|---|---|
| Practicing w/o a License | 13 | 14 | 9 | 19 | 11 |
| Standard of Practice | 4 | 8 | 8 | 2 | 10 |
| Scope of Practice | 0 | 0 | 0 | 0 | 0 |
| Substance Abuse | 0 | 0 | 0 | 0 | 0 |
| Theft | 0 | 0 | 0 | 0 | 0 |
| Felony Conviction | 0 | 0 | 1 | 0 | 0 |
| Fraud/Misrepresentation | 1 | 0 | 3 | 2 | 0 |
| TOTAL | 18 | 22 | 21 | 23 | 21 |

The Board receives relatively few complaints, and the vast majority of the complaints it does receive, pertain to practicing without a license, and most of those are submitted by licensed practitioners.

Table 6 illustrates the number and types of disciplinary actions taken by the Board during this same five-year period.

**Table 6**

**Final Agency Actions**

| Type of Action | FY 99-00 | FY 00-01 | FY 01-02 | FY 02-03 | FY 03-04 |
|---|---|---|---|---|---|
| Revocation | 0 | 1 | 0 | 0 | 0 |
| Surrender of License | 0 | 0 | 0 | 0 | 0 |
| Suspension | 1 | 1 | 1 | 1 | 1 |
| Probation / Practice Limitation | 0 | 0 | 2 | 0 | 2 |
| Letter of Admonition | 1 | 3 | 1 | 1 | 2 |
| License Granted with Probation / Practice Limitations | 0 | 0 | 0 | 0 | 0 |
| License Denied | 0 | 0 | 0 | 0 | 0 |
| Injunction | 0 | 0 | 0 | 0 | 0 |
| Fine | 9 | 9 | 9 | 16 | 8 |
| Continuing Education | 0 | 0 | 0 | 0 | 1 |
| Peer Review | 0 | 0 | 0 | 0 | 1 |
| Cease & Desist | 0 | 1 | 0 | 1 | 2 |
| TOTAL DISCIPLINARY ACTIONS | 11 | 15 | 13 | 19 | 17 |
| Dismiss | 7 | 7 | 8 | 3 | 7 |
| Letter of Concern | 0 | 0 | 0 | 1 | 0 |

Table 6 also indicates that the Board's disciplinary tool of choice is the imposition of fines. This tool is utilized in two-thirds of the cases in which it takes action. Table 7 restates the number of fines imposed for each fiscal year, but also reveals the total values of those fines.

**Table 7**

**Fine Information**

| Fiscal Year | Number of Fines Imposed | Total Value of Fines Imposed |
|---|---|---|
| 99-00 | 9 | $ 6,100 |
| 00-01 | 9 | $ 5,050 |
| 01-02 | 9 | $ 5,950 |
| 02-03 | 16 | $10,300 |
| 03-04 | 8 | $ 6,750 |

Generally, practicing with a lapsed license earns a licensee a letter of admonition and a fine of at least $100. The level of the fine increases along with the length of time during which the license remained lapsed and whether and to what extent the individual practiced architecture in Colorado under a lapsed license.

The Board had adopted fining guidelines, which outlined the level of fines for certain violations. This had the advantage of imposing a certain degree of consistency on the Board and made the imposition of fines seem less arbitrary. The Board rescinded these guidelines in May 2005.

Based on the data contained in Tables 5, 6 and 7, it is reasonable to conclude that architects in Colorado are causing very little, if any, actual harm. If this were not the case, one would expect to see more complaints with greater substance and more severe disciplinary actions. Indeed, this conclusion was confirmed by a review of the Board's complaint files.

## *Analysis and Recommendations*

*Recommendation 1 – Continue the regulation of architects for seven years, until July 1, 2013.*

Architects design the buildings in which people live, work and play. They ensure the adequacy of exit paths and structural integrity, and they coordinate the design and construction of electrical and mechanical systems. Buildings can fail, and when they do, the results can be catastrophic, with damage ranging anywhere from poor air quality or mechanical malfunctions to structural collapse.

Of all the professions involved in the construction of buildings, architects are uniquely positioned to oversee and coordinate the entire process to ensure that a given project results in a safe building. Architects ensure compliance with state, federal and local statutes and regulations, such as the Americans with Disabilities Act, as well as fire and building codes. Architects are intimately involved with the life safety of the projects on which they work.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. Due to the nature of the practice of architecture, the potential for harm at the hands of incompetent architects is high.

Historically, the architect's client was the building owner, who would often become the occupant of the building being constructed. The owner/client, therefore, had an inherent self-interest in ensuring that the resulting building was safe.

This is no longer necessarily the case. It is not uncommon for the modern architect's client to be a developer, whose primary goal is to sell the completed building at a profit. Since the client no longer has occupancy as a goal, the inherent self-interest in constructing a safe building that will stand the test of time is gone. As a result, the architect now occupies the role of guardian to ensure that corners are not cut to the point where safety is sacrificed.

To be sure, building officials review and approve plans, designs and specifications, but it is impractical and inefficient to expect them to identify every flaw. The role of the building official is to ensure compliance with applicable building codes and those codes do not address every circumstance. As a result, it is more efficient to place the burden of designing safe buildings on those with the training, experience and competency to do so -- the architects.

However, there have been very few serious complaints filed against Colorado-licensed architects. An independent review of case files by a representative of the Department of Regulatory Agencies (DORA) revealed that of the 95 cases handled by the Board of Examiners of Architects (Architect Board) between fiscal years 99-00 and 03-04, 56 (59 percent) involved lapsed licenses or practicing without a license. Similarly, during this five-year period, the Architect Board revoked only one license.

This data seems to suggest that architects practicing in Colorado are either exceptionally competent, or that very few grievances are brought before the Architect Board. Both conclusions, however, are purely speculative, but are likely accurate to some degree.

The purpose of regulation is to ensure a minimal level of competency. To do this, the state has established educational, experience and examination requirements that must be satisfied before an individual may obtain a license as an architect. These requirements, as imposed by the State of Colorado, are more or less consistent with those of other states and have been in place for years across the nation.

Thus, it is reasonable to conclude that these pre-licensure demonstrations of competency are at least partially responsible for the low complaint and disciplinary statistics of the Architect Board.

Finally, the historical justification for regulation of professionals rests on the premise that the general public lacks the resources to determine whether a particular practitioner is competent. The state, on the other hand, can make such determinations and issues licenses to those deemed minimally competent.

This justification is particularly salient with respect to architects. Architects create and coordinate detailed designs and specifications involving increasingly complex electrical, mechanical and other systems, not to mention the buildings themselves.

The degree of technical detail involved in such plans renders them virtually unintelligible to anyone who is not in the design or construction industries. With hundreds of thousands to hundreds of millions of dollars at stake, the public interest almost demands that the state ensure that architects are minimally competent.

However, the current regulatory program is less than perfect. As a result, this sunset report contains 17 statutory recommendations and three administrative recommendations, all of which are made with the intent of improving the effectiveness and efficiency of regulation. Not surprisingly, many issues arose during the course of this sunset review that did not result in recommendations, but nevertheless merit some discussion and explanation as to why no recommendations have been made.

Exemption for interior designers. Section 12-4-112(6), Colorado Revised Statutes (C.R.S.), exempts from the practice of architecture those interior designers possessing the requisite education and experience and who have passed the National Council for Interior Design Qualification (NCIDQ) qualification examination. This exemption became effective January 2, 2002, pursuant to House Bill 01-1153 and, in essence, limits to those satisfying these requirements, the ability to submit designs to building departments for permitting purposes.

Proponents of the exemption argue that interior designers enhance public health, safety and welfare through ensuring fire safety, accessibility, ergonomics and the special needs of senior citizens and the disabled.

Opponents of the exemption argue that, among other things, the exemption is redundant, causes confusion, constitutes a restraint of trade and creates a category of special professional privileges without providing an enforcement mechanism to determine or verify compliance.

In discussing whether the exemption is redundant, it is first useful to understand the anatomy of the exemption provided in section 12-4-112(6), C.R.S. Paragraph (6)(a) provides that those individuals possessing the credentials outlined in paragraph (6)(c) may submit designs and specifications to building officials for permitting purposes. Paragraph (6)(b) limits the scope of those designs such that they may not involve:

> the construction of the structural frame system supporting a building, mechanical, plumbing, heating, air conditioning, ventilation, electrical vertical transportations systems, fire rated vertical shafts in any multi-story structure, fire-related protection of structural elements, smoke evacuation and compartmentalization, emergency sprinkler systems, emergency alarm systems, or *any other alteration affecting the life safety of the occupants of a building* (emphasis added).

Opponents of the exemption assert that the emphasized language is repetitive of the exemption provided in section 12-4-112(1)(d), C.R.S., which exempts from the practice of architecture, those who prepare designs and specifications for "nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building."

Proponents of the exemption, on the other hand, argue that the emphasized language must be read in context with the other examples of prohibited practice areas, all of which pertain to a building's structural and mechanical systems. In other words, proponents of the exemption assert that interior designers possessing the requisite credentials may prepare designs and specifications that affect the life safety of a building, so long as those designs and specifications do not alter the building's structure or mechanics.

This distinction is best illustrated by way of example. Moving a load-bearing wall affects a building's structural integrity, and thus the life safety of the building's occupants – this is not something an interior designer possessing the requisite credentials may legally do. The placement of a fire exit affects the life safety of the building's occupants, but does not affect the structural integrity of the building or any of the building's mechanical systems – this is something an interior designer possessing the requisite credentials may do.

While both arguments seem meritorious on their face, a simple exercise in statutory construction supports the proponents of the exemption. To determine the plain meaning of a statute, the statute must be read in its entirety. Taken in its entirety, the emphasized language in paragraph (6)(b) clearly permits interior designers possessing the requisite credentials to prepare designs and specifications that may affect the life safety of a building's occupants, so long as those designs and specifications do not affect the building's structural or mechanical systems.

The exemptions provided in paragraphs (1)(d) and (6) are not redundant and paragraph (6) should not be repealed on such grounds.

Opponents of the exemption also claim that the exemption causes confusion as to when a consumer needs to secure the services of an architect, as opposed to an interior designer possessing the requisite credentials. Confusion as to scope of practice is not unique to architects and interior designers. On the contrary, it is quite common in fields that are so closely related. One way to think of this overlap is to picture a diagram of partially overlapping circles with architects, engineers, interior designers and landscape architects each occupying one such circle. There is considerable overlap amongst and between these four professions, but there is also considerable distinction.

This overlap can serve to offer the consumer a choice of competent practitioners, depending upon the emphasis the consumer wishes to place on a given project. For example, a consumer who desires to build a safe workable space, with little regard for personal style or decoration, may hire an architect. On the other hand, if that consumer wants a safe workable space, but desires to create a certain type of atmosphere through the use of certain lighting or placement of walls or partitions, the consumer may hire an interior designer instead. Assuming both professionals are competent, each will design a space that is safe, but the overall appearance may be very different. Thus, the exemption affords the consumer a choice.

Opponents also argue that the exemption constitutes a restraint of trade. However, the exemption does not protect the title “interior designer.” Nor does the exemption limit the practice of interior design to those who possess the requisite credentials. The exemption merely provides that only those possessing the requisite credentials, regardless of what they may call themselves, may submit designs and specifications to building officials for permitting purposes.

Interior designers who do not possess the requisite credentials may still prepare designs and specifications, but an architect or engineer must approve those plans and specifications prior to their submission to building officials. This does not constitute a restraint of trade because the exemption does not prevent anyone from doing anything. Rather, the exemption merely permits those possessing the requisite credentials to do something in addition to what they could do if they did not possess such credentials.

Additionally, it is still entirely within the discretion of the individual building official as to from whom he/she will accept plans and designs. Individual building officials may determine on their own that they require an architect stamp on all designs and specifications submitted. In such jurisdictions, interior designers possessing the requisite credentials would have to seek the approval of a licensed architect, just as would an interior designer without the requisite credentials.

Furthermore, opponents of the exemption argue that there is no way to enforce the exemption or to determine compliance with it. This is not entirely accurate. The purpose of the exemption is to expressly remove from the practice of architecture, those interior designers possessing the requisite credentials. Unless an exemption applies, those who prepare designs and specifications and submit them to building officials without the approval of an architect are, technically, engaging in the practice of architecture and unless they are licensed, they are in violation of the architect practice act and fall within the jurisdiction of the Architect Board.

The fact that no complaints have been submitted to the Architect Board regarding interior designers seems to indicate that compliance with the exemption is high. Thus, the current exemption has not jeopardized the public's health, safety or welfare, so it should be retained.

Exemption for structures with four units or fewer. The second issue to be addressed in this sunset report regarding which no changes are recommended pertains to another exemption. Specifically, section 12-4-112(1)(a), C.R.S., permits individuals who are not licensed architects to prepare designs and specifications for dwellings containing four units or fewer.

During the course of this sunset review, some advocated for limiting this exemption to one- and two-unit dwellings, essentially single-family homes and duplexes. The reasoning behind such an exemption is that the structural and mechanical systems involved in such structures are relatively simple.

However, the same can be said of three- and four-unit dwellings. These structures are relatively simple in nature. The life safety of such buildings will not be enhanced to any measurable degree by requiring an architect to be involved in their planning. Indeed, such a requirement would unnecessarily make such housing even more expensive for the Colorado consumer, with no appreciable benefit.

Finally, the few substantive complaints received by the Architect Board have not involved these types of structures. Thus, the current exemption has not jeopardized the public's health, safety or welfare, so it should be retained.

Intern Development Program. The final issue regarding which no change is recommended pertains to the education and experience requirements for candidates for licensure as architects. Recall that to obtain a license, candidates must satisfy some combination of education, experience and passage of the National Council of Architectural Registration Boards' (NCARB's) Architect Registration Examination (ARE). One of the permissible combinations under Colorado law permits someone with no college education to acquire enough real world experience to qualify him/her to sit for the ARE and become a licensed architect in Colorado.

Like Colorado, most states require candidates for licensure to obtain some combination of education and experience to be eligible to sit for the ARE, and like Colorado, most states permit licensure by endorsement where the original licensing jurisdiction's licensing requirements are substantially similar to those of the new jurisdiction.

To help streamline these processes, NCARB developed the Intern Development Program (IDP). The IDP's education and experience requirements closely parallel those of Colorado, with one notable exception. Colorado permits candidates without National Architectural Accrediting Board (NAAB)-accredited degrees, as well as those without college degrees, to sit for the ARE and become licensed architects. The IDP precludes these two paths to licensure.

As a result, those who complete the IDP automatically satisfy Colorado's education and experience requirements. However, those who satisfy Colorado's education and experience requirements have not necessarily satisfied the requirements of the IDP.

This, some argue, hinders Colorado licensees when they seek licensure in other jurisdictions. However, it is necessary to recall that the purpose of regulation by the State of Colorado is to enhance public safety without unduly hampering the ability of practitioners to obtain licensure in Colorado. It would be unduly burdensome to require all Colorado licensees to complete the IDP so that the few of them who seek licensure by endorsement in another state have an easier time of it.

Additionally, since the Architect Board has received so few substantive complaints and even fewer complaints involving serious harm, there is absolutely no justification for imposing even more restrictive requirements on licensure. Indeed, the fact that there are so few serious complaints is a testament to the flexible approach Colorado has taken in establishing the prerequisites to licensure as an architect. Colorado should not require completion of NCARB's IDP as a prerequisite to sitting for the ARE, for licensure by endorsement or for initial licensure.

Since the potential for harm is high and since the pre-licensure demonstrations of competency required by the State of Colorado seem to be reducing incompetent practice, the regulation of architects should continue for another seven years, until 2013.

A seven-year extension of regulation is warranted for several reasons. First, the practice of architecture continues to evolve. New technologies, such as computer aided design and drafting (CADD), continue to alter the ways in which architects work. New construction techniques, technologies and metallurgies continue to change the materials with which architects' buildings are constructed. Additionally, new trends, such as "building green," and new laws and building codes, continue to require architects to design buildings that comply with ever changing standards. Thus, while the public's need for competent architects who design safe buildings will continue for the foreseeable future, the aforementioned advances demand that regulation of architects be reviewed again sooner, rather than later.

Second, this Recommendation 1 is premised on the idea that there is a high potential for harm from the unregulated practice of architecture and concludes that regulation should continue despite the low number of complaints and disciplinary actions. Should this premise prove false, and the potential for harm is low and that there are very few substantive complaints because the practice of architecture is inherently safe, this regulation should be reviewed again relatively soon.

Finally, Recommendation 2 of this sunset report proposes a fundamental shift in the way architects are regulated by advocating that the Architect Board be combined with the State Board of Licensure for Professional Engineers and Professional Land Surveyors to create a new State Board of Licensure of the Technical Professions, thus, in effect, combining the regulation of these three professions. The regulation of professional engineers and professional land surveyors is scheduled to sunset on July 1, 2013. This same date is recommended for the next review of the regulation of architects so that the regulation of the three professions to be regulated by this new board will sunset at the same time.

For all these reasons, the regulation of architects should be continued, consistent with the recommendations contained in this sunset report, for seven years, until 2013.

*Recommendation 2 – Improve governmental efficiency by combining the State Board of Examiners of Architects with the State Board of Licensure for Professional Engineers and Professional Land Surveyors, thereby creating a new State Board of Licensure of the Technical Professions. Set a sunset date for this new board at July 1, 2013.*

The second sunset criterion asks whether current statutes constitute the least restrictive form of regulation and requires DORA to consider alternative regulatory mechanisms. Based on the results of this sunset review, DORA concludes that maintaining a separate and distinct Architect Board does not represent the most efficient approach to regulation.

The Architect Board is a Type 1 board, possessing all rulemaking, licensing and disciplinary authority with respect to architects. This type of authority is typical of boards that are charged with regulating professions with standards of practice and in which professional expertise is often required to determine whether practitioners have engaged in substandard practice.

As was noted in Recommendation 1 of this sunset report, the Architect Board's licensing requirements, as established by statute and rule, are consistent with those of other states and the IDP. Thus, the Architect Board's relevance to licensing issues is not in dispute.

However, there have been very few serious complaints filed against Colorado-licensed architects. An independent review of case files by a representative of DORA revealed that of the 95 cases handled by the Architect Board between fiscal years 99-00 and 03-04, 56 (59 percent) involved lapsed licenses or practicing without a license. Furthermore, while 20 (21 percent) of these 95 cases involved unprofessional conduct, only 13 (14 percent) involved substandard practice.

Thus, on only 13 occasions in five years has the professional expertise of the Architect Board been called upon to determine whether a practitioner had engaged in substandard practice and to determine the penalty for such violation. Furthermore, only one of those cases resulted in the revocation of a license.

More telling, however, is the fact that in five of those instances, the Architect Board secured the services of an outside expert to determine certain issues. In other words, the Architect Board deferred to the expertise of another to determine whether a practitioner had engaged in substandard practice.

All of this leads to one, inevitable question: is the Architect Board necessary, or does another, more efficient way to regulate architects exist? While at least two alternatives are feasible, only one makes sense.

The first alternative would be to repeal the Architect Board and regulate architects administratively. Under this approach, often referred to as a "director model," the rulemaking, licensing and disciplinary authority currently vested in the Architect Board would be vested in the Director of DORA's Division of Registrations (Division Director). These types of programs frequently also entail an advisory committee to assist the Division Director in establishing policies and in determining those few cases in which professional expertise is needed. Alternatively, without an advisory committee, the Division Director could retain the services of an expert, just as the Architect Board has repeatedly done, or convene *ad hoc* advisory committees.

However, this approach to regulation rarely results in any substantial cost savings, and those savings that are realized are typically consumed by increased administrative costs, such as an increased workload for the Division Director or his/her designee.

A second, more comprehensive alternative would be to combine the Architect Board with another regulatory program. A logical partner would be the State Board of Licensure of Professional Engineers and Professional Land Surveyors (PE/PLS Board). This partnering is logical based on the simple premise that all three professions are technical in nature and many of these practitioners already work with one another on various aspects of given projects.

Permitting all three professions to sit on the same board would entail many advantages by increasing the breadth with which the board could approach various cases. Complaints against architects would receive the perspective of not just architects, but also professional land surveyors and professional engineers and these individuals may identify issues that are not readily apparent to the other professions.

While it is true that the practice of professional engineering is more diverse[1] than is the practice of architecture, it is also more diverse than is the practice of professional land surveyors, yet the PE/PLS Board has managed to regulate these diversities without any discernable difficulties.

[1] Within the practice of professional engineering are the distinct specialties of structural, civil, industrial, electrical, mechanical and many other types of engineering.

This is due, in part, to the composition of the PE/PLS Board, as well as the types of complaints the PE/PLS Board has reviewed over the years. Pursuant to section 12-25-106(3), C.R.S., the PE/PLS consists of four members who are professional engineers with no more than two engaged in the same discipline of engineering. Thus, within the professional engineer membership on the PE/PLS Board, there is built-in diversity to address a multitude of disciplines.

Additionally, and perhaps more importantly, the Architect Board and the PE/PLS Board face many of the same or similar issues. Between January 1, 1996 and March 31, 2005, the PE/PLS Board took 424 disciplinary actions, but of these, 146 (34 percent) involved lapsed licenses, 59 (14 percent) involved unlicensed practice, and 21 (5 percent) involved violations of stipulations.

In other words, 226 (53 percent) of the cases in which the PE/PLS Board took disciplinary action involved cases in which no subject matter expertise was necessary. When compared with the 61 percent of cases in which the Architect Board took action requiring no professional expertise, any arguments alleging the inability of one profession to sit in judgment of another profession melt away. A significant number of the cases determined by these two boards do not involve standards of practice; they involve administrative issues.

Therefore, the General Assembly should repeal the Architect Board, as well as the PE/PLS Board, and create a new State Board of Licensure of the Technical Professions (New Board). The New Board should be charged with regulating all three technical professions currently regulated by the Architect Board and the PE/PLS Board: architects, professional engineers and professional land surveyors.

Under this proposal, section 12-4-101, *et seq.*, C.R.S., would be repealed and re-enacted as section 12-25-301, *et seq.*, C.R.S. This would be consistent with the way in which the statute governing professional engineers and professional land surveyors is currently structured, with Part 1 of Article 25 of Title 12, C.R.S., regulating professional engineers and Part 2 regulating professional land surveyors. Under this proposal, architects would be regulated by a new Part 3.

In this manner, the substantive provisions of the statute currently governing the practice of architecture would remain largely unchanged; they would simply be renumbered. Certain key provisions, such as grounds for discipline, are already substantively consistent with those for professional engineers and professional land surveyors, though the wording may be slightly different. Such changes should be made for the sake of consistency and to ease the task of the New Board in determining whether violations have occurred. Additionally, any conflicts between the statutes for the two boards relating to processes or procedural or administrative issues should be resolved in favor of those currently employed by the PE/PLS Board, with one exception.

Pursuant to sections 12-25-109(2) and 12-25-209(2), C.R.S., complaints filed with the PE/PLS Board remain confidential and closed to the public until dismissed or until disciplinary action is taken. No such confidentiality provisions exist for architects. Nor should they.

A fundamental premise of democracy is open government. Where there is no compelling reason to operate behind closed doors, government, including regulatory bodies such as the New Board, should be open.

Certain practice acts governing other professions include confidentiality provisions similar to those of the PE/PLS Board. For the most part, however, those practice acts regulate medical or health-related fields where protecting the identity of victims is of great importance. Protecting the identity of the victim of a professional engineer, professional land surveyor or architect is not as important. Indeed, since these professionals work on public structures, concealing the identities of victims or complainants may actually inflict harm on the public at large.

Government should be open. Therefore, sections 12-25-109(2) and 12-25-209(2), C.R.S., should be repealed when the New Board is created.

The New Board should be composed of 13 members: three architects, four professional engineers, three professional land surveyors and three public members. No two of the professional engineers should practice within the same discipline. When necessary, and just as the two current boards may currently do, the New Board could retain the services of experts to augment its own expertise.

The New Board will result in some cost savings, as staff would be required to prepare and staff only one board meeting, rather than two. Additionally, administrative processes could be streamlined so that distinctions between the two boards, such as letterhead, websites and staff allocation, would no longer be necessary.

More importantly, however, the quality of regulatory oversight can be expected to improve. For the first time, the three technical professions would sit on the same board and would, necessarily, have to coordinate policy and standards of practice for all three professions. This will result in a more comprehensive approach to regulation, rather than the current, segmented approach.

Additionally, disciplinary cases will be heard and decided with considerably more industry-specific knowledge. As a result, each professional member sitting on the New Board becomes a highly qualified public member of the board when the New Board deliberates a case involving an occupation other than that particular board member's.

In establishing a combined, omnibus-type board, Colorado would not be unique. At least 20 other states combine regulation of architects with at least one other profession, and of these, 12 combine regulation with engineers, land surveyors, landscape architects, interior designers and geoscientists/geologists/natural scientists.

While several of these states experienced initial resistance to combined regulation, these programs now operate relatively well.

Pursuant to section 12-25-106(2)(b), C.R.S., the regulation of professional engineers and professional land surveyors will sunset on July 1, 2013, and pursuant to Recommendation 1 of this sunset report, the regulation of architects will repeal on the same date. Therefore, the New Board should be scheduled to sunset on July 1, 2013, as well.

Since the Architect Board and the PE/PLS Board face many of the same problems, since the technical professions that these two boards regulate already work closely with one another, since a cost savings could be realized by partnering these two boards and since the New Board would result in more efficient and effective regulation, the General Assembly should combine the Architect Board and the PE/PLS Board into the New Board and the New Board should be scheduled for sunset on July 1, 2013.

For the sake of simplicity, all future references in this sunset report to "Board" shall include the Architect Board, the New Board or both, as the case may be.

### *Recommendation 3 – Clarify that it is a violation of the architect practice act to engage in the practice of architecture without being a duly licensed architect.*

The practice of architecture in Colorado is governed by section 12-4-101, *et seq.*, C.R.S. (Act). The Act defines the practice of architecture and even provides exemptions thereto at section 12-4-102(5), C.R.S. At section 12-4-102(1), C.R.S., the Act defines "architect" as "a person licensed under the provisions of this article and entitled thereby to conduct a practice of architecture in the state of Colorado."

Thus, the Act implies that only those licensed as architects may engage in the practice of architecture, unless an exemption applies, but there is nothing in the Act explicitly prohibiting the unlicensed practice of architecture or making such action a violation of the Act upon which the Board may take action.

Therefore, the General Assembly should amend section 12-4-113(1), C.R.S., to include as a violation of the Act, the practice of architecture without a license or under a license that has expired or that has been suspended or revoked.

### *Recommendation 4 – Protect the title of "licensed architect," rather than simply "architect."*

As is the case in many other professions, an individual may obtain a degree as an architect, but not seek licensure as an architect. Should such an individual be prohibited from using the title "architect?"

The Act defines "architect" at section 12-4-102(1), C.R.S., as, "a person licensed under the provisions of this article and entitled thereby to conduct a practice of architecture in the state of Colorado."

Additionally, section 12-4-113(1)(c)(I), C.R.S., makes it a Class 3 misdemeanor for any person who is not licensed to advertise, represent or hold him/herself out in any manner as an architect. The Board was faced with an issue involving this provision in spring 2005. In responding to a question during a debate in a political race in Aspen, a candidate stated that his experience as an architect had been of value in serving on Aspen's Planning and Zoning Commission. This individual holds a degree in architecture but not a license, and, regardless, does not practice as an architect. The Board issued a cease and desist order to this individual to prevent him from representing himself to the public as an architect. The individual sued the Board for impinging upon his First Amendment rights.

While the Board certainly followed the letter of the law in this case, this case demonstrates that, taken together, sections 12-4-113(1)(c)(I) and 12-4-102(1), C.R.S., do not enhance public protection because the candidate was not attempting to solicit business as an architect. This is particularly disturbing because the Act was enacted to protect the public from the incompetent practice of architecture, and these provisions go beyond that legitimate goal.

Finally, section 12-4-115(1), C.R.S., states,

> No person preparing plans and specifications for or construction contracts for the administration of any alteration, remodeling, or repair of any building shall use the title "architect" unless such person has been licensed as an architect pursuant to this article.

This section, more than any other, serves to protect the public. It specifies that one who engages in certain activities may not use the title "architect" unless duly licensed. It also contradicts the statutory provisions previously discussed.

To clarify this issue, the title "licensed architect" should be protected, rather than the title "architect." Thus, section 12-4-113(1)(c)(I), C.R.S., would prohibit any person from advertising, representing or holding him/herself out as a licensed architect without being duly licensed. This is only logical, and the same logic would apply to section 12-4-115(1), C.R.S.

Since protecting the title "architect" is overly broad and confusing and since protecting the title "licensed architect" is more accurate and less confusing, the General Assembly should protect the title "licensed architect," rather than simply "architect."

*Recommendation 5 – Repeal from the grounds for discipline the requirement that licensees report to the Board other licensees who have violated the Act.*

Section 12-4-111(2)(l), C.R.S., authorizes the Board to impose discipline on any licensee who fails "to report to the board any architect known to have violated any provision of this article or any board order or rule or regulation."

This provision should be repealed for several reasons. First, while licensees should be encouraged to report violations to the Board, they should not be subject to discipline for failing to do so. This is particularly true given the language of this statutory provision, which requires reporting of "known" violations. It is impractical to expect a licensee to know that a colleague has violated the Act.

Additionally, this provision has never been invoked. This is due in part to the fact that establishing knowledge is extremely difficult. In this case, the Board would have to prove that a licensee knew that another licensee had violated the Act. Absent an administrative finding by the Board, it is impossible for a licensee to have such knowledge. A licensee may suspect a violation has occurred, but it is onerous to expect a licensee to know that a violation has occurred.

Since this provision is unrealistic and impossible to enforce, it should be repealed.

*Recommendation 6 – Repeal from the grounds for discipline the prohibition against licensees providing clients and potential clients with gifts or payments to obtain work.*

Section 12-4-111(2)(m), C.R.S., authorizes the Board to impose discipline on any licensee who makes or offers to make

> any gift (other than a gift of nominal value such as reasonable entertainment or hospitality), donation, payment, or other valuable consideration to influence a prospective or existing client or employer regarding the employment of the architect[.]

At first blush, this prohibition seems reasonable. This appears to be a simple prohibition against bribery. However, bribery implies the involvement of a public official. Plenty of laws already exist elsewhere prohibiting this type of activity.

All this provision accomplishes is to restrict the types of marketing practices private practitioners may employ to secure work from other private (i.e., non-governmental) clients.

The sunset criteria ask whether regulation serves to protect the public health, safety and welfare. It is difficult to see how the regulation of architects' marketing practices enhances public protection.

The education, experience and examination requirements imposed on architects ensures that all Colorado licensed-architects are minimally competent. Furthermore, section 12-4-111(2)(o), C.R.S., prohibits architects from performing services beyond their competency, training and education. Indeed, with the exception of sub-paragraphs (l) and (m), all other grounds for disciplinary action against architects pertain to the actual practice of architecture, not issues ancillary to running a practice.

Therefore, how a competent architect goes about securing work should be of no concern to the state. Prohibiting an architect from providing a prospective client a new $30,000-car is no different than offering to perform the prospective client's project at a $30,000-discount.

Additionally, this provision requires the Board to establish an intent to influence. It is so notoriously difficult to establish intent that the Board has never invoked this provision.

The free market, not the state, determines what architects may charge. Similarly, the state should not regulate whether architects secure work through the offering of gifts or through substantial discounts. Accordingly, section 12-4-111(2)(m), C.R.S., should be repealed.

*Recommendation 7 – Clarify what constitutes a record set of drawings and when and how such drawings must bear an architect's stamp.*

During the course of any given project, several sets of designs and drawings are prepared. Bid sets are typically prepared by architects for the contract bidding process. Submittal sets are the designs and drawings submitted to the local building department for permitting purposes. Working drawings, as part of the overall construction documents, are prepared and used during actual construction of the structure.

Throughout the construction process, designs and specifications may change. At the conclusion of the construction project, all of these changes are incorporated into a final, record set of drawings.

Depending upon various regulatory, legal and contractual obligations, several of these sets of drawings that are prepared along the way may bear the architect's seal. The architect seal comprises a stamp (either rubber or embossed), signature and date. During a complex project, it is reasonable to conclude that there could be multiple sets of conflicting drawing sets bearing the architect's seal. Confusion as to what constitutes the final, record set is likely. Thus, the Act specifies that the record set must be clearly identified. Additionally, the Act requires the architect to retain the record set for at least three years.

Until the advent of CADD, it was common to have only one record set. Copies of the record set could be made, but only the original record set bore the architect's seal. Additionally, the original record set was typically placed on Mylar film, and copies were placed on diazo-produced prints. In short, the difference between the original and the copy was self-evident.

CADD technology has changed all of that. While local building departments do not yet require drawings to be submitted electronically, it is reasonable to conclude that such requirements will be imposed in the near future.

Additionally, CADD technology has made it easier and less costly to generate multiple originals of drawings. Thus, the Act needs to be amended to account for the existence of multiple originals and the designation of record sets, as well as electronic submittals of plans to building departments.

Therefore, the General Assembly should amend section 12-4-116(1), C.R.S., as follows:

> The use of an architect's stamp shall be subject to the following:
>
> (a) The stamp, signature of the architect whose name appears on the stamp, and the date of the signature of such architect shall be placed on ~~reproductions of~~ drawings to establish a ~~the~~ record set of ~~contract documents~~ drawings. ~~The~~ A record set ~~may~~ shall not be reproduced. ~~The~~ A record set shall be prominently identified and shall be for the permanent record of the architect, the project owner, and the regulatory authorities who have jurisdiction over the project. Nothing in this section shall preclude multiple record sets.
>
> (d) ~~The~~ A stamped record set with original signature shall be retained in possession of the architect and shall be held for a minimum of three years following beneficial occupancy or beneficial use of the project by the owner or occupant.

These changes recognize the fact that there may be multiple record sets and require the architect to retain, for three years, a record set bearing the architect's original signature. This is necessary, given the likelihood of multiple sets of original drawings being generated during the course of a project, as well as the likelihood of various parties desiring record sets at the conclusion of the project.

*Recommendation 8 – Repeal the requirement that the organizational documents of architectural firms contain provisions whereby members of the firm agree to liability for the errors and omissions of the firm's employees and members, and instead impose such liability as a matter of law.*

Section 12-5-110(1.5), C.R.S., authorizes corporations, limited liability companies and registered limited liability partnerships to practice architecture. However, pursuant to section 12-4-110(2)(d)(I), C.R.S., the organizational documents of such entities must provide that all shareholders, members or partners of the entity agree that all such individuals are liable for all acts, errors and omissions of the employees, members and partners except during periods of time when the entity maintains professional liability insurance.

Holding such individuals liable when the entity lacks liability insurance is typical and sound public policy. Historically, professionals were held individually liable. With the rise of corporate practice, however, these individuals may avoid personal liability, but only when the entity maintains professional liability insurance. In this manner, the public maintains its ability to hold the professionals accountable.

However, rather than simply imposing liability on the professionals when the firm lacks professional liability insurance, the Act requires the organizing documents to provide that such individuals agree to this liability. This is both overly burdensome and unnecessary.

Many architectural firms are national in scope. If a firm is incorporated or organized under Colorado law, the Act is not overly burdensome. However, for those firms that are incorporated or organized under the laws of another state, and that state does not require the provision of this agreement to be contained in the organizational documents, then when that firm decides to operate in Colorado, it must amend its organizational documents to comply with this provision of the Act. The process and legal fees involved in such an endeavor present an unnecessary burden.

This burden is unnecessary because the same type of liability can be imposed as a matter of law, thus obviating the need for such firms to amend their organizational documents.

Therefore, section 12-4-110(2)(d)(I), C.R.S., should be amended to repeal the language regarding the entity's shareholders, members and partners agreeing to such liability, and replaced with language that simply states that shareholders, members and partners are so liable, regardless of what the entity's organizational documents set forth.

*Recommendation 9 – Clarify that a majority of natural persons in an architectural firm must be licensed architects who, if not licensed in Colorado, would qualify for licensure by endorsement.*

Section 12-4-110(1), C.R.S., provides:

> Except as otherwise provided in this section, no firm, partnership, entity, or group of persons may be licensed to practice architecture, but a partnership, entity, or group of persons may use the term "architects" in its business name if a majority of the officers and directors or members or partners are licensed architects.

This provision has caused substantial confusion among national architectural firms seeking to commence operations in Colorado. Very often, these firms call the Board's staff requesting clarification as to whether "majority" refers to natural persons or ownership interests. The Board has consistently interpreted "majority" to refer to natural persons, and this is consistent with a plain reading of the statute and should, therefore, be clarified in statute so as to avoid continued confusion.

Similarly, the Board has consistently interpreted "licensed architects" to mean those who hold a license from some jurisdiction. Again, this is an issue for national architectural firms seeking to commence operations in Colorado. Some larger firms may have hundreds of shareholders or partners, scattered across the United States. To expect a majority of them to obtain licensure in Colorado is impractical and would pose an unnecessary barrier to their entrance into the Colorado marketplace.

On the other hand, the Board has no control over the licensing requirements of other states. This is, in part, why Colorado's licensure by endorsement provision requires the licensing requirements of the original licensing jurisdiction to be substantially equivalent to those of Colorado. In this manner, the public's safety is safeguarded. This standard should also be used in determining who is considered a licensed architect for purposes of section 12-4-110(1), C.R.S.

So as to reduce the amount of staff time devoted to answering these types of questions, the General Assembly should amend section 12-4-110(1), C.R.S., to clarify that "majority" refers to natural persons and that "licensed architects" refers to those licensed in any jurisdiction and if not licensed in Colorado, those who would qualify for licensure by endorsement in Colorado.

### *Recommendation 10 – Repeal the prohibition against using the name of a departed partner in the name of the firm.*

Section 12-4-110(5), C.R.S., states:

> No limited liability company, registered limited liability partnership, partnership, joint venture or association shall continue to use, as a part of its firm name, the name of any person for more than two years after such person has ceased to be a bona fide member of such firm.

While this provision of the Act seems relatively straight forward, it has caused some confusion for firms that have legal names, as stated in their organizational documents, that are different from the names under which they do business.

The Board has interpreted this provision to mean that so long as the firm's legal name, as stated in its organizational documents, complies with the statute, the firm may do business under any name it desires.

This calls into question the purpose of this statutory provision because, in essence, this provision merely requires a firm to incur legal fees and filing fees to amend its organizational documents to comply with the law while permitting such a firm to continue to market itself with the departed member's name in the firm name. Nothing, from a public protection perspective, is accomplished.

Arguably, this provision was originally enacted as a public protection measure so as to prevent firms from misleading the public into thinking that someone is associated with a particular firm when, in fact, that individual has departed. This is important because the practice of architecture, like the practice of medicine or law, is service-oriented. Practitioners are not necessarily interchangeable. The decisions that go into securing the services of one professional over another can be very personal.

However, if a consumer approaches a particular firm to secure the services of a particular architect, and that firm continues to use that architect's name in the firm name even though that architect has departed, the consumer will attempt to locate the sought after architect.

Similarly, firms invest a considerable amount of time, energy and money in their names. A firm's name is its brand, and consumers often approach particular firms because of the reputation of the firm as a whole, not necessarily to secure the services of a particular architect. As a result, the public could actually be harmed by requiring firms to change their well established names whenever a member of a firm departs.

Finally, individual architects have incentive to protect the use of their names. As a result, it is common for membership agreements to contain provisions addressing the use of individual names upon separation from firms. Individual architects can adequately address this issue through contracts. It is not necessary for the state to intervene in such matters.

Since there seems to be confusion regarding this issue and since public protection is not enhanced by requiring firms to amend their organizational documents but allowing them to continue to do business under a name that includes a departed member, the General Assembly should repeal this provision.

*Recommendation 11 – Require licensees to notify the Board of any legal judgements or settlements involving life safety, health or public welfare, rather than requiring notification of the filing of any legal or arbitration proceedings.*

Section 12-4-117, C.R.S., requires architects to notify the Board of any pending legal actions or arbitration proceedings involving the architect and pertaining to the life safety of a building within 90 days of learning of such proceedings. As a practical matter, however, this provision is rarely, if ever, followed.

The Board and staff speculate that architects are reluctant to notify the Board out of fear that the Board will initiate a complaint based on such information, thus potentially providing the architect's civil opponent with information the opponent may not otherwise have known about. Similarly, members of the Board and staff concede that even if the Board were to receive such a notice, it would likely wait until after the conclusion of the civil matter or arbitration to commence any type of action because the architect's legal counsel would likely not cooperate with any kind of investigation out of fear of providing the opposition with additional information.

While this attitude is disturbing, it is understandable. It is disturbing because the Board, as an organ of the state, has its own interest in protecting the public, separate and apart from whatever claims a private party may lodge against an architect in a civil matter or arbitration proceeding. Such proceedings may drag on for years. Given the Board's stance on this issue, any architect involved in such a proceeding would be permitted to continue to practice, potentially inflicting additional harm on more consumers, while the Board does nothing.

This position is understandable, however, because the Board has limited resources, and it would not be cost effective to continue to pursue a matter in which the architect's legal counsel is likely to stall or refuse to cooperate. Indeed, this is why the practice acts for many professionals require notification of judgments or settlements, as opposed to the initiation of proceedings, which the Act requires.

While less than perfect, requiring notification of judgments and settlements would at least inform the Board that the architect had been involved in some kind of proceeding and that it had been resolved. Note that this recommendation advocates for notification of any judgment, not just a judgment holding the architect liable. This is an important distinction because the Board's burden of proof in the administrative arena is less than that of a plaintiff in a civil matter. Because a plaintiff fails to win a civil case does not necessarily preclude a finding by the Board that a violation occurred and that disciplinary action is warranted.

Note also that notification is limited to proceedings involving life safety, health or public welfare. This limitation is important to retain so as to avoid notification of judgments and settlements involving contractual or employment disputes. The Board should only be notified of those issues over which it would have jurisdiction.

Finally, neither the current statutory provision nor this Recommendation 11 precludes a private party, including a plaintiff in a civil suit, from submitting a complaint to the Board. If such a complaint were submitted, the Board would be obligated to open an investigation just as it would with any complaint that did not involve civil legal or arbitration proceedings.

For all these reasons, the General Assembly should amend section 12-4-117, C.R.S., to require architects involved in legal and arbitration proceedings involving life safety, health or public welfare to notify the Board of such proceedings only after entry of judgment or settlement.

*Recommendation 12 – Amend section 12-4-111(2)(h), C.R.S., to include as grounds for discipline, pleading nolo contendere to a felony, and to specify that all such crimes must relate to the practice architecture.*

Section 12-4-111(2)(h), C.R.S., includes in the grounds for discipline and denial of licensure, "conviction of or pleading guilty to a felony in Colorado or to any crime outside Colorado that would constitute a felony in Colorado."

This provision is missing two elements common to such provisions. First, it precludes denial or discipline based on a pleading of *nolo contendere*, or no contest. This is common language in the practice acts of most other professions because it permits the regulatory agency to consider anything other than an acquittal in making licensing and disciplinary decisions.

Additionally, this provision should be restricted by limiting such convictions and pleas to those crimes that relate to the practice of architecture. The Board should only be concerned with whether a licensee or potential licensee can competently practice architecture, not whether such an individual was convicted of assault years earlier.

Therefore, the General Assembly should amend section 12-4-111(2)(h), C.R.S., to include pleas of *nolo contendere* and to restrict such pleas and convictions to those crimes that relate to the practice of architecture.

### *Recommendation 13 – Repeal the requirement that the Board provide annual notification to licensees of changes in the Board's rules and licensing requirements.*

Sections 12-4-104(4) and (5), C.R.S., require the Board to provide, in writing, to all licensees and on an annual basis, any changes to rules or statutes governing the practice of architecture.

Historically, the Board has complied with these requirements by distributing an annual newsletter. The cost of printing and postage for the 2004 newsletter amounted to $5,035. This cost does not include the staff time involved in writing and preparing the newsletter.

With the advent of the Internet and such widespread Internet access, a hardcopy newsletter is archaic and unnecessarily costly. Repealing sections 12-4-104(4) and (5), C.R.S., would not preclude the Board from continuing to provide such information on the Board's website. This would substantially reduce the cost of the newsletter simply in terms of postage and printing, but also in terms of waste since it is doubtful that all practitioners read the current annual newsletter from cover to cover.

Additionally, licensees interested in keeping informed of proposed rules or amendments to existing rules can register with DORA's Office of Policy, Research and Regulatory Reform to receive regulatory notices by email. This service is free and will alert such licensees of proposed rule changes as they occur, rather than just once a year, as does the current newsletter.

Finally, section 12-4-104(4), C.R.S., speaks in terms of "the roster," which was repealed following the last sunset review of the Board in 1997.

For these reasons, the General Assembly should repeal sections 12-4-104(4) and (5), C.R.S.

*Recommendation 14 – Amend section 12-4-105(3), C.R.S., to include in the types of fees that the Board may impose, a fee for a replacement license certificate and for licensure by endorsement.*

Section 12-4-105(3), C.R.S., enumerates the fees for which the Board may impose fees. This list includes licensure by examination, reexamination, reciprocity and recertification.

The Board no longer issues licenses pursuant to reciprocity agreements. Rather, architects who are licensed in other jurisdictions who seek licensure in Colorado may do so by endorsement. Reciprocity implies that the Board has agreements with other states whereby those states issue licenses to Colorado licensees if the Board issues licenses to those states' licensees. Thus, the term "reciprocity" in section 12-4-105(3), C.R.S., should be replaced with "endorsement."

Additionally, the enumerated fees are not all inclusive. For example, pursuant to Board Rule 100.600, licensees seeking replacement license certificates must pay a fee. A strict interpretation of the statute would preclude the imposition of this fee. However, since the Board is a cash-funded program, it is reasonable to assess such a fee.

Therefore, the General Assembly should amend section 12-4-105(3), C.R.S., to replace "reciprocity" with "endorsement," and to include in this list, replacement certificates.

*Recommendation 15 – Repeal as redundant, section 12-4-107(4), C.R.S.*

Section 12-4-107(4), C.R.S., authorizes the Board to adopt the examinations, education and experience requirements of NCARB. This provision is unnecessary because the Board has the authority to establish these standards by virtue of section 12-4-107(1), (2) and (3), C.R.S. Specific authority to adopt the standards promulgated by NCARB is, therefore, not necessary.

Since it is redundant of the provisions preceding it, the General Assembly should repeal section 12-4-107(4), C.R.S.

*Recommendation 16 – Amend section 12-4-107(5), C.R.S., to repeal specific reference to NCARB.*

The last sentence of section 12-4-107(5), C.R.S., authorizes the Board to accept applications for licensure by endorsement by a national clearinghouse. This is an efficient approach and should be retained. However, the provision goes on to provide the clearinghouse maintained by NCARB as an example.

It is generally inadvisable to identify an organization by name in statute unless absolutely necessary because: 1) such an organization could change its name, 2) such an organization could change its standards, and 3) such an organization could cease to exist. Any of these eventualities would render such statutory provisions obsolete.

The reference in section 12-4-107(5), C.R.S., to national clearinghouses is sufficient. There is no need to mention NCARB by name.

Therefore, the General Assembly should repeal the reference to NCARB in section 12-4-107(5), C.R.S.

### *Recommendation 17 – Repeal the grandfather provision in section 12-4-109, C.R.S.*

Section 12-4-109, C.R.S., provides:

> Any person holding a valid license to practice architecture in Colorado before July 1, 1986, shall be licensed under the provisions of this article without further application by said person. All official actions of the board made or taken before July 1, 1986, are expressly ratified.

House Bill 86-1270 substantially revised the Act, thus necessitating section 12-4-109, C.R.S. However, since all of the licenses issued prior to July 1, 1986, have been renewed and thus are in compliance with the modern Act, the first sentence of section 12-4-109, C.R.S., is no longer needed.

Additionally, according to Board staff, several licensees have attempted to argue that since they were licensed prior to July 1, 1986, they are not required to renew their licenses due to the provision that such licensees be licensed "without further application."

However, the second sentence of this section is still necessary because the record of any licensee that had been disciplined prior to July 1, 1986, should continue to reflect that discipline.

This Recommendation 17 is necessary only if the General Assembly rejects Recommendation 2 of this sunset report. If Recommendation 2 is accepted, however, then a provision similar to section 12-4-109, C.R.S., will again be necessary so all of the actions taken, and licenses issued by the Architect Board are ratified by the New Board.

*Administrative Recommendation 1 – The Board should repeal Rule 100.502(F), which prohibits candidates for licensure from appealing and reviewing their results on the ARE.*

To become a licensed architect in Colorado, a candidate must satisfy some combination of education and experience requirements, and take and pass the ARE. Whereas the Act permits for various ways in which candidates may satisfy the education and experience requirements, all candidates must take and pass the ARE.

However, results of the ARE are not subject to appeal or review. This situation is attributable to actions taken by both NCARB and the Board. Recall that NCARB owns the ARE.

Colorado's contract with NCARB for use of the ARE was due to expire on June 30, 2001, but on June 26, 2001, NCARB submitted to the Board a document outlining the terms and conditions upon which Colorado could continue to use the ARE as the licensing examination in Colorado. Furthermore, as part of these new terms and conditions, NCARB refused to enter into a formal contract with any jurisdiction unless a particular jurisdiction had a law requiring formal contracts for all non-cash outsource contracts.

In short, then, Colorado has no contract with NCARB to use the ARE, which means that NCARB could cease offering the ARE in Colorado at any time without notice. More important for individual licensure candidates, however, is the fact that NCARB discourages and the Board prohibits, appeals of ARE results.

Paragraph 1.2(c) of NCARB's Terms and Conditions, dated July 2001, states, in pertinent part:

> Any appeals by Applicants relating to the ARE, if permitted by law, may be made only to an Applicant's Board. Neither NCARB nor its Test Administrator will be responsible for processing or conducting any appeals or for providing any information to any Applicant concerning the results of an Applicant's examination.

Thus, NCARB will not entertain any appeals or challenges to the ARE unless an individual candidate's regulatory board permits such challenges or appeals. Furthermore, appeals of the vignette divisions of the ARE, arguably the most subjective divisions of the examination, are expressly prohibited, regardless of whether a particular state board authorizes such appeals. From a psychometric perspective, this is cause for grave concern.

Indeed, this analysis is confirmed by NCARB's own *ARE Guidelines: Version 3.0*, effective July 2004, which states, in pertinent part:

> A review procedure is available to you ONLY if your Board of Architecture permits reviews of failed examinations. [ ] Any challenge to a graphic vignette will not be reviewed by NCARB.[2]

More troubling still, the Board's Rule 100.502(F) expressly prohibits appeals of the ARE by stating, "Examinations and examination results are not subject to review or appeal."

Due to NCARB's strict policies and the Board's rule, candidates for licensure in Colorado who fail a division of the ARE may not appeal that failing score. This not only violates general principals of due process, it also violates the Colorado Administrative Procedure Act (APA).

Section 24-4-104(9), C.R.S., states:

> If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of such notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

The Board's Rule 100.502(F), as a practical matter, violates this statutory provision. If an applicant is denied a license due to failing the ARE, the applicant could request a hearing, which would necessarily be based on failure of the ARE. By the Board's own rule, appeals of the ARE are prohibited, so the hearing would either be denied, thus violating the APA, which requires a hearing, or a hearing would be held with a predetermined result of denial of the ARE appeal. Thus, the spirit of the APA is violated because the candidate has no practical way to appeal the denial of a license.

However, even if the Board were to accept this Administrative Recommendation 1, thereby permitting appeals of the ARE, NCARB has established appeal and review fees that make such appeals and reviews financially difficult.

Paragraph 1.2(b) of NCARB's Terms and Conditions, dated July 2001, states,

> NCARB discourages Applicant reviews and appeals . . . the fee for an Applicant review of an ARE division will be a minimum of $300 per review. In addition, if an appeal is allowed by the Applicant's Board, then there will also be a general appeal fee to be paid to NCARB which will be a minimum of $90 plus $10 for each multiple choice item challenged . . . Challenges to the Site Planning, Building Planning and Building Technology Divisions are not authorized by NCARB and NCARB will not cooperate in any such challenge.

By establishing such exorbitant fees, NCARB's stated discouragement of appeals is redundant. Indeed, this attitude seems consistent with NCARB's position on other issues as well.

[2] *ARE Guidelines: Version 3.0,* National Council of Architectural Registration Boards, July 2004, p. 27.

As its name implies, NCARB is an association of boards of architecture, most of which contain both professional and public members. However, NCARB's leadership has historically prevented non-architect board members from serving on several of its national committees.

For example, recall that one of the Board's members is a general contractor. On at least two separate occasions, this member has volunteered to serve on NCARB committees and has been rejected because he is not an architect.

To its great credit, the Board has expressed dissatisfaction with NCARB and has sponsored several resolutions to reform NCARB's leadership and processes. However, by expressly denying Colorado candidates from appealing their failing ARE results, the Board aids NCARB's efforts at remaining beyond reproach.

Section 12-4-107(3)(a), C.R.S., authorizes the Board to either adopt an examination or to develop its own examination. Unfortunately, the ARE is the only viable competency examination available. It is used by all 50 states and most Canadian provinces, and only those jurisdictions that are members of NCARB may use the ARE. Additionally, it would be cost prohibitive for the Board to develop and administer its own examination. In short, there are no viable alternatives to NCARB and the ARE.

Although the Board cannot affect the unconscionable fees assessed by NCARB, the Board can at least permit those candidates who have spent thousands of dollars on their educations and on ARE-examination fees and years of their lives preparing for the ARE to at least question whether they did, in fact, fail.

The Board should repeal Rule 100.502(F) and work with NCARB to reform its ARE appeals process.

*Administrative Recommendation 2 – The Board should amend Board Rule 100.604 to repeal language referring to the annulment of a license.*

Board Rule 100.604 permits the Board to demand licensees whose licenses are revoked, suspended or annulled, to submit to the Board such licensee's wall certificate of licensure and architect stamp.

However, the Act does not authorize the Board to annul licenses. Therefore, this rule exceeds the Board's statutory authority.

Fortunately, according to Board staff, the Board has never annulled a license, so this provision has never been instituted.

Board Rule 100.604 should be amended to repeal all language referring to the annulment of a license.

*Administrative Recommendation 3 – The Board should reinstate its fining guide.*

Section 12-4-111(5), C.R.S., authorizes the Board to impose fines of up to $5,000. To its credit, the Board developed a fining guide, which set forth, in relatively simple terms, the level and circumstances under which fines would be imposed. This helped to ensure that the Board remained more or less consistent in its imposition of fines, ensuring that similar types of violations received similar types of discipline. Additionally, the fining guide served to alert licensees as to the level of fine they faced should they violate the Act.

However, in May 2005, the Board felt itself overly constricted by its fining guide, for reasons not entirely clear, and voted to abolish it.

Importantly, the fining guide was just that -- a guide. It was not a rule to which the Board was necessarily confined. It simply provided guidance as to how the Board had decided similar issues in the past, thus providing guidance on how similar issues should be decided in the future.

Without such a fining guide, the Board opens itself to allegations of acting in an arbitrary and capricious manner in the future. Therefore, since the fining guide assisted the Board in attaining a minimal level of consistency, the Board should reinstate the fining guide.

## *Appendix A – Sunset Statutory Evaluation Criteria*

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.