

HOUSE No. 4303

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 14, 2014.

The committee on Ways and Means, to whom was referred the Bill recognizing the profession of interior designers to bid on state contracts (House, No. 2832), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4303).

For the committee,

BRIAN S. DEMPSEY

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act recognizing the profession of interior designers to bid on state contracts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (b) of section 44 of chapter 7C of the General Laws, as
2 appearing in the 2012 Official Edition, is hereby amended by striking out the definition of
3 “Continued services” and inserting in place thereof the following definition:-

4 “Continued services”, authorization for a designer or interior designer who has been
5 appointed for 1 stage of a project to act as the designer or interior designer for a succeeding stage
6 or stages of the same project.

7 SECTION 2. Said subsection (b) of said section 44 of said chapter 7C is hereby further
8 amended by inserting after the word “designer”, in line 30, the following words:- , interior
9 designer.

10 SECTION 3. Said subsection (b) of said section 44 of said chapter 7C is hereby further
11 amended by striking out the definition of “Extended services” and inserting in place thereof the
12 following 4 definitions:-

13 “Extended services”, authorization for a designer or interior designer who has been
14 appointed to provide design services for a project to act as designer or interior designer for work
15 to be done on another project not originally included in that designer's or interior designer's
16 contract.

17 “Interior Designer”, an individual, corporation, partnership, sole proprietorship, joint
18 stock company, joint venture or other entity engaged in the practice of interior design, who may
19 serve as the prime consultant for projects that primarily involve construction or other work
20 relating to the nonstructural interior elements of a building or structure and who provides
21 services that do not require a registered architect, landscape architect or engineer; provided,

22 however, that an interior designer shall demonstrate competence by completion of a nationally-
23 recognized certification.

24 “Nonstructural”, interior elements or components that are not load-bearing and do not
25 require design computations for a building’s structure, including, but not limited to ceiling and
26 partition systems and excluding the structural frame supporting a building.

27 “Partition”, a wall which does not support a vertical load of a structure other than its own
28 weight, but may support loads attached to it such as cabinetry, shelving or grab bars, and does
29 not extend further than from the floor of an interior area of a structure designed for human
30 habitation or occupancy, to the underside of the deck of that structure.

31 SECTION 4. Section 46 of said chapter 7C, as so appearing, is hereby amended by
32 inserting after the word “designers”, in line 2, the following words:- , interior designers.

33 SECTION 5. Said section 46 of said chapter 7C is hereby further amended by inserting
34 after the word “designer”, in line 15, the following words:- or interior designer.

35 SECTION 6. Subsection (b) of said section 46 of said chapter 7C, as so appearing, is
36 hereby amended by striking out the last sentence and inserting in place thereof the following
37 sentence:-

38 An agency granted an exemption or renewal thereof from the jurisdiction of the board
39 shall, during any period such exemption or renewal is in effect, advertise for and select designers
40 and interior designers to perform design services and continue or extend the services of any
41 designers or interior designers in accordance with the agency’s last written designer or interior
42 designer selection procedures approved by the board in conformity with this section.

43 SECTION 7. Said section 46 of said chapter 7C, as so appearing, is hereby amended by
44 striking out, in lines 39, 40, and 50 the word “selection” and inserting in place thereof, in each
45 instance, the following words:- or interior designer selection.

46 SECTION 8. Subsection (d) of said section 46 of said chapter 7C, as so appearing, is
47 hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

48 (iii) the agency director had filed a semi-annual report containing: a list of contracts for
49 designer or interior designer services awarded by the agency since its last application, including
50 for each project the name and address of any designer or interior designer awarded such
51 contracts; a brief description of the project; the estimated, or if available, the final construction
52 cost for the project; the estimated or, if available, final fee paid to the designer or interior
53 designer; and certification that all contracts so listed were awarded by the procedure described in
54 the agency’s last application.

55 SECTION 9. Section 47 of said chapter 7C, as so appearing, is hereby amended by
56 striking out, in lines 1, 7 and 13, the word “designer” and inserting in place thereof, in each
57 instance, the following word:- design.

58 SECTION 10. Subsection (b) of said section 47 of said chapter 7C, as so appearing, is
59 hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

60 (iii) the qualification required of applicants for the projects, including whether interior
61 designers are eligible to apply, as determined by subsection (h) of section 48;.

62 SECTION 11. Said section 47 of said chapter 7C, as so appearing, is hereby further
63 amended by inserting after the word “designers”, in line 22, the following words:- and interior
64 designers’.

65 SECTION 12. Section 48 of said chapter 7C, as so appearing, is hereby amended by
66 inserting after the word “designer”, in lines 1, 7 and 38, the following words:- , interior designer.

67 SECTION 13. Said section 48 of said chapter 7C is hereby further amended by inserting
68 after the word “designers”, in line 43, the following words:- and interior designers.

69 SECTION 14. Said section 48 of said chapter 7C is hereby further amended by striking
70 out subsection (g) and inserting in place thereof the following 2 subsections:-

71 (g) Interior designers shall be eligible to compete as the prime consultant only for
72 projects that primarily involve construction or other work related to nonstructural interior
73 elements of a building or structure.

74 (h) The division of capital asset management and maintenance, in consultation with the
75 board, shall develop a standard designer and interior designer evaluation form that shall be
76 completed by every public agency, as defined in section 44A of chapter 149, upon completion of
77 the work under a design contract under its control. The evaluation form shall be submitted to the
78 division and the board for the designer's or interior designer's qualification file. The official from
79 the public agency or the owner's representative shall certify that the information contained on the
80 designer's or interior designer's evaluation form represents, to the best of the official's or
81 representative's knowledge, a true and accurate analysis of the designer's or interior designer's
82 performance record on the contract. The public agency shall mail a copy of the designer's or
83 interior designer's evaluation form to the designer or interior designer who may, within 30 days,
84 submit a written response to the division and board disputing any information contained in the
85 form and setting forth any additional information concerning the building project or the oversight
86 of the building construction contract by the public agency as may be relevant to the evaluation of
87 the designer's or interior designer's performance. The division and board shall attach such a
88 response to the evaluation form for inclusion in the designer's or interior designer's qualification
89 file.

90 No public employee or public employer, as defined in section 1 of chapter 258, and no
91 person shall be liable for an injury or loss to a designer or interior designer as a result of the
92 completion of a designer or interior designer evaluation form as required by this section, unless
93 the individual completing the evaluation form has been found by a superior court of competent
94 jurisdiction to have acted in a willful, wanton or reckless manner. If a designer or interior
95 designer, seeking to recover damages resulting from injury caused by such an evaluation,
96 commences a suit against a person who has completed a designer or interior designer evaluation
97 form as required by this section, the public agency for whom the evaluation form was completed
98 or the commonwealth, if the evaluation was completed for a state agency, shall provide for the
99 legal representation of that person. The public agency or the commonwealth, where an
100 evaluation was completed for a state agency, shall indemnify the person who completed the
101 evaluation from all personal financial losses and expenses including, but not limited to, legal fees
102 and filing costs, if any, in an amount not to exceed \$1,000,000; provided, however, that no such
103 person shall be indemnified for losses other than legal fees and filing costs under this section if
104 that person is found by a court or a jury to have acted in a willful, wanton or reckless manner.

105 The awarding authority shall provide the designer or interior designer with a written
106 preliminary evaluation at the completion of the schematic phase of the project for informational
107 purposes.

108 A public agency that fails to complete and submit the designer or interior designer
109 evaluation form, together with any written response by the designer or interior designer, to the
110 division within 70 days of the completion of a project shall be ineligible for receipt of public
111 funds disbursed by the commonwealth for the purposes of public building or public works
112 projects.

113 SECTION 15. Section 49 of said chapter 7C, as so appearing, is hereby amended by
114 inserting after the word “designers”, in line 32, the following words:- and interior designers.

115 SECTION 16. Said section 49 of said chapter 7C is hereby further amended by inserting
116 after the word “designer”, in line 36, the following words:- or interior designer.

117 SECTION 17. Section 50 of said chapter 7C is hereby amended by striking out
118 subsections (a) and (b), as so appearing, and inserting in place thereof the following subsections:-

119 (a) In the selection of a designer or interior designer when the fee for design services has
120 been set by the commissioner prior to the selection process, the commissioner shall appoint a
121 designer or interior designer from among the list transmitted to the commissioner under section
122 49. If the commissioner appoints any designer or interior designer other than the one ranked first
123 by the board, the commissioner shall file a written justification of the appointment with the
124 board.

125 (b) When the fee for design services is to be negotiated, the commissioner shall review
126 the list transmitted by the board, and may exclude any designer or interior designer from the list
127 if a written explanation of the exclusion is filed with the board. The commissioner shall then
128 appoint a designer or interior designer based on successful fee negotiation. The commissioner or
129 persons designated by the commissioner shall first negotiate with the first ranked designer or
130 interior designer remaining on the list. Should the commissioner be unable to negotiate a
131 satisfactory fee with the first ranked designer or interior designer within 30 days, negotiations
132 shall be terminated and negotiations undertaken with the remaining designers or interior
133 designers, 1 at a time, in the order in which they were ranked by the board, until an agreement is
134 reached. In no event may a fee be negotiated which is higher than a maximum fee set by the
135 commissioner prior to selection of finalists. Should the commissioner be unable to negotiate a
136 satisfactory fee with any designer or interior designer initially selected as a finalist by the board,
137 the board shall recommend additional finalists in accordance with this chapter. The
138 commissioner may require a finalist with whom a fee is being negotiated to submit a fee proposal
139 and include with it such information as the commissioner requires to provide current cost and
140 pricing data on the basis of which the designer's or interior designer's fee proposal may be
141 evaluated.

142 SECTION 18. Section 51 of said chapter 7C is hereby amended by striking out
143 subsection (b), as so appearing, and inserting in place thereof the following subsection:-

144 (b) If the designer's, interior designer's or construction manager's fee is negotiated, the
145 designer, interior designer or construction manager shall file a truth-in-negotiations certificate
146 prior to being awarded the contract by the commissioner, which must be incorporated into the
147 contract. The certificate shall contain:

148 (i) a statement that the wage rates and other costs used to support the designer's or
149 interior designer's compensation are accurate, complete, and current at the time of contracting;
150 and

151 (ii) an agreement that the original contract price and any additions to the contract may be
152 adjusted within 1 year of completion of the contract to exclude any significant amounts if the
153 commissioner determines that the fee was increased by such amounts due to inaccurate,
154 incomplete or noncurrent wage rates or other costs.

155 SECTION 19. Said section 51 of said chapter 7C is hereby further amended by striking
156 out subsections (d) through (i), inclusive, and inserting in place thereof the following
157 subsections:-

158 (d) Every contract for design services awarded under sections 44 to 58, inclusive, shall
159 include the following:

160 (i) certification that the designer, interior designer or construction manager has not given,
161 offered or agreed to give any person, corporation or other entity any gift, contribution or offer of
162 employment as an inducement for, or in connection with, the award of the contract for design
163 services;

164 (ii) certification that no consultant to or subcontractor for the designer, interior designer
165 or construction manager has given, offered or agreed to give any gift, contribution or offer of
166 employment to the designer, interior designer or construction manager, or to any other person,
167 corporation, or entity as an inducement for, or in connection with, the award to the consultant or
168 subcontractor of a contract by the designer, interior designer or construction manager;

169 (iii) certification that no person, corporation or other entity, other than a bona fide full
170 time employee of the designer, interior designer or construction manager, has been retained or
171 hired by the designer, interior designer or construction manager to solicit for or in any way assist
172 the designer, interior designer or construction manager in obtaining the contract for design
173 services upon an agreement or understanding that such person, corporation or other entity be
174 paid a fee or other consideration contingent upon the award of the contract to the designer or
175 interior designer; and

176 (iv) certification with respect to contracts which exceed \$10,000 or which are for the
177 design of a building for which the budgeted or estimated construction costs exceed \$100,000 that
178 the designer or interior designer has internal accounting controls as required by subsection (c) of
179 section 39R of chapter 30 and that the designer or interior designer has filed and will continue to
180 file an audited financial statement as required by subsection (d) of said section 39R.

181 (e) A public agency shall not enter into a contract for design services unless the public
182 agency or the designer or interior designer has obtained professional liability insurance covering
183 negligent errors, omissions and acts of the designer or interior designer or of any person or
184 business entity for whose performance the designer or interior designer is legally liable arising
185 out of the performance of the contract. The total amount of such insurance shall at a minimum
186 equal the lesser of \$1,000,000 or 10 per cent of the project's estimated cost of construction, or
187 such larger amounts as the public agency may require, for the applicable period of limitations. A
188 designer or interior designer required by the public agency to obtain all or a portion of such
189 insurance coverage at the designer's or interior designer's own expense shall furnish a certificate
190 or certificates of insurance coverage to the public agency prior to the award of the contract. For
191 purposes of this paragraph only, "public agency" shall have the meaning set forth in section 1.

192 At the request of the director, a consultant employed by a designer or interior designer
193 subject to this paragraph shall obtain and maintain a liability insurance policy covering negligent
194 errors, omissions and acts of such consultant or of any person or business entity for whose
195 performance the consultant is legally liable arising out of the performance of the contract for
196 consultant services. The consultant shall furnish a certificate or certificates of such insurance

197 coverage to the division in the case of a consultant hired by a designer or interior designer
198 selected pursuant to section 49 or to a public agency not subject to the jurisdiction of said board
199 prior to the employment of such consultant by the designer or interior designer. A liability
200 insurance policy maintained under this paragraph shall provide for coverage of such type and
201 duration and in such amount as the public agency shall require.

202 (f) A designer, interior designer, construction manager, or programmer who has been
203 determined by the board to have provided materially false statements or information under this
204 section shall be disqualified by the board from future work on any project for such time as the
205 board determines is appropriate.

206 (g) Contracts for design service may include a requirement that the designer or interior
207 designer be responsible for overseeing the construction phase of the project.

208 (h) An awarding authority in a city or town may allow a designer or interior designer who
209 conducted a feasibility study to continue with the design of a project; provided, that nothing
210 herein shall prohibit an awarding authority from commissioning, at the discretion of the
211 awarding authority, an independent review, by a knowledgeable and competent individual or
212 business doing such work, of the feasibility of the designer's or interior designer's work to insure
213 its reasonableness and its adequacy before allowing the designer or interior designer to continue
214 on the project.

215 (i) Contracts for design services shall include a provision that the designer or interior
216 designer or the consultants hired by the designer or interior designer shall not be compensated
217 for any services involved in preparing changes that are required for additional work that should
218 have been anticipated by the designer or interior designer in the preparation of the bid
219 documents, as reasonably determined by the executive head of the public agency responsible for
220 administering the design contract. For the purpose of this subsection, "public agency" shall have
221 the meaning as set forth in section 1.

222 SECTION 20. Section 52 of said chapter 7C, as so appearing, is hereby amended by
223 inserting after the word "designer", in lines 1 and 7, the following words:- or interior designer.

224 SECTION 21. Section 53 of said chapter 7C, as so appearing, is hereby amended by
225 inserting after the word "designer", in line 2, the following words:- , interior designer.

226 SECTION 22. Section 54 of said chapter 7C is hereby amended by striking out
227 subsection (b), as so appearing, and inserting in place thereof the following subsection:-

228 (b) The board shall publish guidelines to assist public agencies not within the board's
229 jurisdiction in the establishment of a professional and objective designer or interior designer
230 selection procedure, including a model application form, consistent with the provisions and
231 intent of sections 44 to 58, inclusive. The board shall publish a standard designer or interior

232 designer selection form which shall be used by all cities, towns and public agencies not within
233 the board's jurisdiction; provided, that before publishing the standard form, the board shall seek
234 input from the cities, towns and other public agencies not within the board's jurisdiction. Any fee
235 guidelines promulgated by the board shall be accompanied by a recommended basic scope of
236 designer's or interior designer's services that shall reflect the work associated with the fee
237 guidelines. From time to time, and no less frequently than every 3 years, the board shall review
238 and revise the fee schedule based upon prevailing costs at the time of such review and revision.

239 SECTION 23. Section 55 of said chapter 7C, as so appearing, is hereby amended by
240 inserting after the word "designer", in line 7, the following words:- or interior designer.