

# Building Design Law

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## **45:4B-1. Short title**

This act shall be known and may be cited as the "Building Design Services Act."

L.1989, c.277, s.1.

## **45:4B-2. Findings, declarations**

The Legislature finds and declares that there is an area of concurrent practice between the practice of architecture and the practice of engineering, specifically in the area of building design. In order to eliminate uncertainty and provide for the resolution of future disputes in the area of concurrence, the Legislature declares that it is in the public interest to create a Joint Committee of Architects and Engineers to receive referrals from the New Jersey State Board of Architects and the State Board of Professional Engineers and Land Surveyors; conduct investigations to determine violations of this act; conduct, at its discretion, hearings; communicate its findings in writing; and issue declaratory rulings on the use group classifications contained in section 7 of this act.

Nothing herein, except as provided in section 5 of this act, shall be deemed to preempt the ultimate decision making authority of the boards.

It is also the Legislature's intent to provide for contracting between architects and engineers without compromising the integrity of either profession.

This act is declared remedial except that the powers and duties of the committee shall be limited to those contained in section 5 of this act.

L.1989, c.277, s.2.

## **45:4B-3 Definitions.**

3. For the purposes of this act:

a. "Architectural project" means any building or structure the plans for which may be prepared, designed, signed, and sealed by a licensed architect pursuant to section 7 of this act.

b. "Boards" means the New Jersey State Board of Architects and the State Board of Professional Engineers and Land Surveyors.

c. "Closely allied professional" means and is limited to licensed architects, professional engineers, land surveyors, professional planners, and certified landscape architects.

d. "Engineering project" means a building or structure the plans for which may be prepared, designed, signed, and sealed by a professional engineer pursuant to section 7 of this act.

e. "Engineering systems" means those systems necessary for the proper function of a building and surrounding site, the proper design of which requires engineering knowledge acquired through engineering or architectural training and experience. These systems include

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but are not limited to structural, electrical, heating, lighting, acoustical, ventilation, air conditioning, grading, plumbing and drainage. Drainage facilities for sites of 10 acres or more or involving storm water detention facilities or traversed by a water course shall only be designed by a professional engineer.

f. "Joint committee" means the Joint Committee of Architects and Engineers created pursuant to section 4 of this act.

g. "Owner" means any person, agent, firm, partnership or corporation having a legal or equitable interest in the property or any agent acting on behalf of such individuals or entities.

h. "Practice of architecture" or "architectural services" means the rendering of services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and administration of construction for the purpose of determining compliance with drawings and specifications.

i. "Practice of engineering" or "engineering services" means any service or creative work the adequate performance of which requires engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water, engineering studies, and the administration of construction for the purpose of determining compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any engineering project including: utilities, structures, buildings, machines, equipment, processes, work systems, projects, telecommunications, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. The design of buildings by professional engineers shall be consistent with section 7 of this act. The practice of professional engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

j. "Responsible charge" means the rendering of regular and effective supervision by a competent licensed architect or professional engineer as appropriate to those individuals performing services which directly and materially affect the quality and competence of professional work rendered by the licensee. A licensee engaged in any of the following acts or practices shall be deemed not to have rendered regular and effective supervision:

(1) The regular and continuous absence from principal office premises from which professional services are rendered, except for the performance of field work or presence in a field office maintained exclusively for a specific project;

(2) The failure to personally inspect or review the work of subordinates where

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necessary and appropriate;

(3) The rendering of a limited, cursory or perfunctory review of plans for a building or structure in lieu of an appropriate detailed review; and

(4) The failure to personally be available on a reasonable basis or with adequate advanced notice for consultation and inspection where circumstances require availability.

L.1989,c.277,s.3; amended 2001, c.378, s.2.

## **45:4B-4 Joint Committee of Architects and Engineers.**

4. There is created in the Division of Consumer Affairs in the Department of Law and Public Safety a Joint Committee of Architects and Engineers which shall consist of five members, two of whom shall be licensed architect members of the New Jersey State Board of Architects, two of whom shall be professional engineer members of the State Board of Professional Engineers and Land Surveyors and one of whom shall be appointed by the Governor.

The professional members shall be appointed by their respective board presidents with the advice and consent of a majority of their respective boards. They shall serve at the discretion of their respective boards during their terms of office.

The gubernatorial appointment shall be a resident of this State with experience as an arbitrator and shall not be a licensed architect, professional engineer, or a closely allied professional. The gubernatorial appointment shall serve from the date of appointment for a term of five years and shall not serve for more than two consecutive terms. The gubernatorial appointment may be removed for cause by the Governor.

An alternate member shall be chosen from each board in the same manner as the professional members. An alternate member may represent the appointing board when a professional member is absent from a joint committee meeting. While acting in this capacity the alternate member shall enjoy all the rights and privileges of a voting professional member.

The gubernatorial appointment with an equal number of architect and engineer professional members present shall constitute a quorum. No joint committee business shall be conducted without a quorum.

The joint committee shall meet at least six times a year, except that it shall meet no less than once every two months.

The joint committee members shall be entitled to receive per diem fees and expenses equivalent to fees paid to members of the professional and occupational licensing boards pursuant to section 2 of P.L.1977, c.285 (C.45:1-2.5).

The cost of operation of the joint committee shall be borne equally by the boards which shall adopt such fees by regulation as are necessary to fund such operation.

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L.1989,c.277,s.4; amended 2001, c.378, s.3.

### **45:4B-5. Powers, duties of joint committee**

The joint committee shall have the following powers and duties:

a. To investigate, within a reasonable period of time, any alleged violation of this act referred by the boards.

b. To conduct, at its discretion, investigative hearings on any alleged violation of this act referred by the boards.

c. To notify the boards, in writing, if in a particular matter, it finds that no violation of this act has occurred. In the event such a finding is made, no further action shall be taken with respect to that particular matter by either board or the joint committee.

d. To notify the boards, in writing, if in a particular matter, it finds that a violation of this act has occurred. In the event of such a finding the board possessing authority to discipline the licensee or other regulated entity found to have violated this act shall either initiate disciplinary action, or where in its determination the basis for the joint committee's finding is insufficient, refer the matter back to the joint committee for further investigation and evaluation.

e. To determine, by regulation, the assignment of use group classification established pursuant to section 7 of this act for any building or structure not contemplated within the use groups or whose classification is not reasonably ascertainable.

f. To issue declaratory rulings with regard to determining a building or structure's primary use group classification for the purpose of determining if such building or structure is an architectural or engineering project, or both. Requests for declaratory rulings shall be submitted to the joint committee by either of the boards. The joint committee may issue a declaratory ruling which shall bind the boards and all parties to the proceeding on the state of the facts alleged. That ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court.

g. To promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

L.1989, c.277, s.5.

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## **45:4B-6. Referral of complaint, question, controversy to joint committee**

Any complaint, question, or controversy involving the application of this act may be referred to the joint committee for evaluation and such action as may be authorized herein. The boards shall provide any and all documents in their possession regarding any matter referred to the joint committee and shall, where necessary and appropriate, exercise the investigation or enforcement power conferred by law in order to aid and assist the joint committee in its functions.

No joint committee member shall be disqualified from any board deliberation or action solely by reason of that member's having participated in joint committee activity.

L.1989, c.277, s.6.

## **45:4B-7. Classification of buildings, structures**

a. For the purposes of this act, buildings and structures are classified by their use into use groups as determined by the BOCA National Building Code. The following chart based on the BOCA National Building Code/1987, tenth edition, designates projects by use groups and sets forth those which may be designed, prepared, signed, and sealed by licensed architects and professional engineers, or both, as indicated. In the event that the BOCA National Building Code's provisions are altered in subsequent editions nothing herein contained shall be deemed to be altered.

### BUILDING DESIGN CATEGORIES

BOCA Use Group	Architects	Engineers
Classification	May Design	May Design
-Assembly	All	A-5 Outdoor Assembly use or as an incidental use.
B-Business	All	None other than Note 1 or as an incidental use.
-Educational	All	None except for an incidental use.
-Factory and Industrial	All	All
H-High Hazard	All	All
-Institutional	All	None except for an incidental use.
M-Mercantile	All	None except for an incidental use.
R-Residential	All	None except for an incidental use.

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S-Storage	All	All
U-Utility	All	All
	Except an Engineering Work	

Note 1. Professional engineers may design the following projects within the B Use group:

- (a) Car wash facilities;
- (b) Materials testing laboratories; and,
- (c) Telephone exchanges and data processing relay or equipment facilities.

b. An engineering work such as a sewage or water treatment plant, power plant, or transportation system, shall be prepared, designed, signed, and sealed by a professional engineer only.

c. Professional engineers may prepare, design, sign and seal buildings or portions of buildings in a non-permitted use group classification only as an incidental use.

A portion of a building shall be deemed to be an incidental use where the portion is an ancillary part of an engineering project and the building or portion is of a building design category prohibited to engineers. The area of the incidental use shall not constitute more than 10% of the building's total floor area or 2000 square feet whichever is greater.

In the design of traditional engineering works projects such as sewage or water treatment plants, power plants or transportation systems, the area of the incidental use shall not constitute more than 10% of the total square footage of all structures in the project, or 2000 square feet, whichever is greater. Where public access is a primary consideration in buildings such as transportation terminals, railroad stations, or administration buildings, those buildings shall be designed by architects only.

L.1989, c.277, s.7.

## **45:4B-8. Licensed architect; contracts for services; conditions**

A sole proprietor or business association, which may by law render or offer to render engineering services shall enter into a contract with an owner to provide architectural and engineering services under the following conditions:

- a. The contract with the owner is in writing and provides for a coordinated rendering of architectural and engineering services.
- b. Architectural services shall be provided pursuant to a separate, written, independent

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subcontract which clearly delineates the responsibility of the licensed architect or business association and the contracting entity.

c. Any subcontract for the providing of architectural services pursuant to this act shall provide that:

(1) The licensed architect or business association shall render such services as an independent professional and not as an employee of a sole proprietor or business association which may by law provide or offer to provide engineering services.

(2) The licensed architect shall exercise independent professional judgment consistent with accepted standards of the practice of architecture with regard to the project as its circumstances may dictate.

d. A professional engineer may design any engineering additions to an architectural project.

e. Corporations subject to the requirements of subsection a. of section 7 of P.L.1989, c.276 (C.45:8-56) shall, in addition to the requirements provided therein, be subject to the following:

(1) At least two thirds of the directors shall be professional engineers; and

(2) A minimum of 20% of the shares shall be owned by professional engineers.

L.1989, c.277, s.8.

### **45:4B-9. Professional engineer; contracts for services; conditions**

A sole proprietor or business association, which may by law render or offer to render architectural services, shall enter into a contract with an owner to provide architectural and engineering services under the following conditions:

a. The contract with the owner is in writing and provides for a coordinated rendering of architectural and engineering services.

b. Engineering services shall be provided pursuant to a separate, written, independent subcontract which clearly delineates the responsibility of the professional engineer or business association and the contracting entity.

c. Any subcontract for the providing of engineering services pursuant to this act shall provide that:

(1) The professional engineer or business association shall render services contracted for as an independent professional and not as an employee of a sole proprietor or business association which may by law provide or offer to provide architectural services.

(2) The professional engineer shall exercise independent professional judgment consistent with accepted standards of the practice of engineering with regard to the project as its

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circumstances may dictate.

- d. A licensed architect may design any architectural additions to an engineering work.

L.1989, c.277, s.9.

### **45:4B-10. Architect to design engineering systems; conditions**

A licensed architect shall provide the design of engineering systems in connection with an architectural project under either of the following conditions:

- a. The engineering systems are designed within the architect's office and the work is done under the responsible charge of a licensed architect or a professional engineer. Where such work is done under the responsible charge of a licensed architect, the architect shall sign and seal all plans and specifications. If the architect designates a professional engineer to be in responsible charge of all or a portion of the design of the engineering systems, the professional engineer shall sign and seal all such engineering designs; or

- b. All or a portion of the engineering systems are designed outside the architect's office under a subcontract with a professional engineer who is in responsible charge of the work. The contract shall be in writing and provide that the professional engineer shall exercise independent professional judgment consistent with accepted standards of engineering with regard to the project as its circumstances may dictate. This work product shall be submitted by said engineer:

- (1) On drawings with the engineer's title block, properly signed and sealed;
- (2) In report or specification form, appropriately identified, signed, and sealed;
- (3) In letter form properly signed;
- (4) In any other form as is consistent with the assignment.

L.1989, c.277, s.10.

### **45:4B-11. Licensee to maintain records**

A licensee shall maintain such records as are reasonably necessary to establish that the licensee exercised regular and effective supervision of any professional services of which he or she was in responsible charge.

L.1989, c.277, s.11.

### **45:4B-12. Engineers may perform building design services, not architectural services**

Notwithstanding the provisions of this act, an individual or business association, which may by law practice engineering, but not architecture, shall not use the title architect or advertise or use any title, sign, card or device to indicate that that sole proprietor or business association may perform architectural services. A sole proprietor or business association in advertising or offering to perform services pursuant to section 7 or 8 of this act, shall designate or describe

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those services as "building design services" or the substantial equivalent but shall not utilize the term "architectural services" or its substantial equivalent.

L.1989, c.277, s.12.

### **45:4B-13. Architects may perform works facilities design, not engineering services**

Notwithstanding the provisions of this act, a sole proprietor or business association, which may by law practice architecture, but not engineering, shall not use the title engineer or advertise or use any title, sign, card or device to indicate that that sole proprietor or business association may perform engineering services. That sole proprietor or business association in advertising or offering to perform services pursuant to section 7 or 9 of this act, shall designate or describe such services as "works facilities design" or the substantial equivalent but shall not utilize the term "engineering services" or its substantial equivalent.

L.1989, c.277, s.13.

### **45:4B-14. Violation of act deemed professional misconduct**

a. Consistent with section 5 of this act, any licensed architect who, or business association authorized to offer architectural services which, violates this act shall be disciplined by the New Jersey State Board of Architects. Such a violation shall be deemed professional misconduct. Any professional engineer who, or business association authorized to offer engineering services which, violates this act shall be disciplined by the State Board of Professional Engineers and Land Surveyors. Such a violation shall be deemed professional misconduct.

b. Any violation of this act by an unlicensed individual or unauthorized business association shall be disciplined by the New Jersey State Board of Architects pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). Such a violation shall be deemed the unlicensed practice of architecture. However, the design of an engineering work by an unlicensed individual or unauthorized business association shall be disciplined by the State Board of Engineers and Land Surveyors pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). Such a violation shall be deemed the unlicensed practice of engineering.

L.1989, c.277, s.14.