

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1862 (Chen)
Version: May 9, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Engineering, land surveying, and architecture: limited liability partnerships

DIGEST

This bill removes the sunset on provisions authorizing licensed engineers, land surveyors, and architects to form limited liability partnerships (LLPs).

EXECUTIVE SUMMARY

Although entities – such as corporations and LLPs – are treated as legal persons in many contexts, the state has placed limits on when, and under what conditions, licensed professionals may render their services as an LLP. These limits are intended to ensure that the LLP structure – which, as the name suggests, limits the partners’ liability – is not used to prevent a person injured by the LLP from collecting on the judgment. Among other things, an LLP must maintain insurance policies or self-insure for damages against it, up to a certain amount based on the size of the partnership. Current law authorizes licensed architects, engineers, and land surveyors to form and operate as LLPs, subject to a January 1, 2026, sunset.

This bill would eliminate the January 1, 2026, sunset entirely. The author has agreed, however, to amend the bill to instead extend the sunset to January 1, 2034.

This bill is sponsored by the American Council of Engineering Companies of California and is supported by the American Institute of Architects, California, the American Society of Civil Engineers, Region 9, Associated General Contractors, the California Builders Alliance, the California Geotechnical Engineering Association, the California Land Surveyors Association, Sacramento Regional Builders Exchange, and the Structural Engineers Association of California. The Committee has not received timely opposition to this bill. The Senate Business, Professions and Economic Development Committee passed this bill with a vote of 12-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Professional Engineers Act, which governs the profession and licensing of civil engineers, electrical engineers, and mechanical engineers. (Bus. & Prof. Code, div. 3, ch. 1, §§ 6700 et seq.)
- 2) Permits one or more civil, electrical, or mechanical engineers to practice or offer to practice, within the scope of their licensure, civil, electrical, or mechanical engineering as a sole proprietorship, partnership, LLP, firm, or corporation, if all of the following conditions are met:
 - a) A civil, electrical, or mechanical engineer currently licensed in this state is an owner, partner, or officer in charge of the engineering practice of the business.
 - b) All civil, electrical, or mechanical engineering services are performed by, or under the responsible charge of, a professional engineer licensed in the appropriate branch of professional engineering.
 - c) If the business name contains the name of any person, that person is licensed as a professional engineer, a licensed land surveyor, a licensed architect, or a geologist, as specified. (Bus. & Prof. Code, § 6739(a).)
- 3) Permits an out-of-state business to operate with a branch office in this state if it meets the requirements of 1) and has an owner, partner, or officer who is in charge of the engineering work in the branch in this state, and who is physically present at the branch office on a regular basis. (Bus. & Prof. Code, § 6739(b).)
- 4) Provides that the provisions in 2) and 3) authorizing professional engineers to operate as an LLP sunset on January 1, 2026. (Bus. & Prof. Code, § 6739(i).)
- 5) Establishes the Professional Land Surveyors' Act, which governs the profession and licensing of professional land surveyors. (Bus. & Prof. Code, div. 3, ch. 15, §§ 8700 et seq.)
- 6) Permits one or more licensed land surveyors, or civil engineers licensed in the state before 1982, to practice or offer to practice, within the scope of their licensure, land surveying as a sole proprietorship, partnership, LLP, firm, or corporation, if all of the following conditions are met:
 - a) A land surveyor currently licensed in this state is an owner, partner, or officer in charge of the land surveying practice of the business.
 - b) All land surveying services are performed by, or under the responsible charge of, a land surveyor.

- c) If the business name contains the name of any person, that person is licensed as a land surveyor, a licensed land surveyor, as specified. (Bus. & Prof. Code, § 8729(a).)
- 7) Permits an out-of-state business to operate with a branch office in this state if it meets the requirements of 1) and has an owner, partner, or officer who is in charge of the land surveying work in the branch in this state, and who is physically present at the branch office on a regular basis. (Bus. & Prof. Code, § 8729(b).)
 - 8) Provides that the provisions in 6) and 7) authorizing land surveyors to operate as an LLP sunset on January 1, 2026. (Bus. & Prof. Code, § 8729(i).)
 - 9) Establishes the Uniform Partnership Act of 1994, which governs partnerships, including LLPs and foreign LLPs, engaging in business in the state. (Corp. Code, tit. 2, ch. 5, §§ 16100 et seq.)
 - 10) Defines the following relevant terms:
 - a) “Foreign limited liability partnership” means a partnership, other than a limited partnership, formed under the laws of another jurisdiction, as specified. (Corp. Code, § 16101(a)(6).)
 - b) “Registered limited liability partnership” means a partnership, other than a limited partnership, formed by an agreement and is licensed under the laws of this state to engage in the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law, as specified. (Corp. Code, § 16101(a)(8).)
 - c) “Professional limited liability partnership services” means the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law. (Corp. Code, § 16101(a)(14).)
 - 11) Provides that no registered LLP or foreign LLP may render professional limited liability partnership services except through licensed persons. (Corp. Code, § 16951.)
 - 12) Establishes procedures by which a partnership can file a registration with the Secretary of State to become a registered partnership. (Corp. Code, § 16953.)
 - 13) Requires a registered LLP or a foreign LLP to provide security for claims based on acts, errors, or omissions arising out of the practice architecture through one or a combination of the following:
 - a) Maintaining insurance policies against liability imposed on it or against it by law for damages arising out of claims; a partnership with five or fewer licensees shall not be less than \$1 million and a partnership with more than five licensees shall maintain an additional \$100,000 of coverage for each additional licensee, up to \$5 million.

- b) Maintaining in trust or bank escrow cash or specified securities in the same amounts as set forth in 13)(a). (Corp. Code, § 16956(a)(3).
- 14) Provides that each partner of a registered or foreign LLP architecture services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership under 13) and the amount actually provided; this requirement is deemed to be met if the partnership has a net worth of equal to or exceeding \$10 million. (Corp. Code, § 16956(a)(3).)
- 15) Requires a registered LLP or a foreign LLP to provide security for claims based on acts, errors, or omissions arising out of the practice of engineering or the practice of land surveying through one or a combination of the following:
- a) Maintaining insurance policies against liability imposed on it or against it by law for damages arising out of claims; a partnership with five or fewer licensees shall not be less than \$2 million and a partnership with more than five licensees shall maintain an additional \$100,000 of coverage for each additional licensee, up to \$5 million.
 - b) Maintaining in trust or bank escrow cash or specified securities in the same amounts as set forth in 15)(a). (Corp. Code, § 16956(a)(4).)
- 16) Provides that each partner of a registered or foreign LLP providing architecture, engineering or land surveying services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership under 15) and the amount actually provided; this requirement is deemed to be met if the partnership has a net worth of equal to, or exceeding, \$10 million. (Corp. Code, § 16956(a)(4).)
- 17) Provides that 13)-17) sunset on January 1, 2026. (Corp. Code, § 16956(f).)

This bill:

- 1) Eliminates the January 1, 2026, sunset provisions authorizing persons licensed to engage in the practice of engineering, land surveying, or architecture to form registered LLPs and foreign LLPs and the sunset provisions on the related security requirements.

COMMENTS

1. Author's comment

According to the author:

AB 1862 provides greater stability to the engineering, land surveying, and architectural firms that are indispensable in creating and maintaining California's infrastructure.

2. The legislative history of permitting engineers, land surveyors, and architects to form LLPs

Although entities – such as corporations and LLPs – are treated as legal persons in many contexts, the state has placed limits on when, and under what conditions, licensed professionals may render their services as an LLP.¹ These limits are intended to ensure that the LLP structure – which, as the name suggests, limits the partners' liability – is not used to prevent a person injured by the LLP from collecting on the judgment. Among other things, an LLP must maintain insurance policies or self-insure for damages against it, up to a certain amount based on the size of the partnership.²

Architects have been able to form LLPs since 1999,³ and engineers and land surveyors have been able to form LLPs since 2011.⁴ Currently, architecture LLPs with up to five licensees must insure for up to \$1,000,000 in damages, which increases by \$100,000 per additional licensee, up to a maximum of \$5,000,000 in coverage.⁵ Engineering and land surveying LLPs with up to five licensees must insure for up to \$2,000,000 in damages, which increases by \$100,000 per additional licensee, up to a maximum of \$5,000,000 in coverage.⁶ These amounts were last increased in 2010.⁷

The bills authorizing the creation of architecture, engineering, and land surveying LLPs initially included sunsets, and the Legislature has extended the sunsets many times.⁸ As this Committee noted in its analysis of SB 920 (Cannella, Ch. 150, Stats. 2018), the most recent bill extending the sunset on the statutes authorizing architects, engineers, and land surveyors to operate as LLPs, there is an "ongoing policy question" regarding "whether the required insurance minimums are adequately meeting the underlying

¹ See, e.g., Bus. & Prof. Code, §§ 6739, 8729; Corp. Code, §§ 16956, 16969.

² Corp. Code, §§ 16956, 16969.

³ AB 469 (Cardoza, Ch. 504, Stats. 1998).

⁴ SB 1008 (Padilla, Ch. 634, Stats. 2010).

⁵ *Id.*, § 16956(a)(3).

⁶ *Id.*, § 16956(a)(4).

⁷ See SB 1008 (Padilla, Ch. 634, Stats. 2010).

⁸ See "Prior legislation," *infra*.

goal of providing the ability for persons injured by an LLP to recover based on their claim.”⁹

3. This bill eliminates the sunset on the statutes permitting architects, engineers, and land surveyors to operate as LLPs

As currently in print, this bill eliminates entirely the provisions permitting architects, engineers, and land surveyors to operate as LLPs. As discussed above, however, part of the function of these sunset provisions is to allow the Legislature ongoing oversight into the effectiveness of the insurance requirement, including whether the amount of the requirement is still appropriate. Given that the insurance requirement has not been increased since 2010, removing the sunset and depriving the Legislature of further opportunities for review seems particularly premature. As a result, the author has agreed to amend the bill to instead extend the sunset until January 1, 2034.

4. Amendments

As noted above, the author has agreed, in lieu of eliminating the sunset on the provisions authorizing architects, engineers, and land surveyors to operate as LLPs, to instead extend the existing January 1, 2026, sunset until January 1, 2034.

5. Arguments in support

According to a coalition of the bill’s supporters, including the sponsor, the American Council of Engineering Companies of California:

LLPs are a hybrid of a corporation and a general partnership, which are attractive to the design professional community as it provides for flexible management structures and operation. Like a general partnership, all partners have equal rights in the management of an LLP and owners must be licensed professionals.

In 1995, legislation was enacted to authorize attorneys and licensed accountants to form LLPs (SB 513, Chapter 679, Statutes of 1995). Partners of LLPs are only personally liable for those torts in which they personally participated, rather than jointly and severally liable for any other torts or debts of the partnership. The enactment of the LLP status for attorneys and accountants conformed California law to the law in 49 other states that permit business organizations to form LLPs. It was a great benefit to national firms to be able to create a parallel business organizational structure in each state.

⁹ Sen. Com. on Judiciary, analysis of Sen. Bill No. 920 (2017-2018 Reg. Sess.) as amended Apr. 2, 2018, p. 6.

In 1998, legislation was enacted to add architects to the LLP statutory framework (AB 469, Chapter 504, Statutes of 1998).

The ability to organize as an LLP is one more simple tool California businesses can employ that allows them to be nimble in our economy.

SUPPORT

American Council of Engineering Companies of California (sponsor)

American Institute of Architects, California

American Society of Civil Engineers, Region 9

Associated General Contractors

California Builders Alliance

California Geotechnical Engineering Association

California Land Surveyors Association

Sacramento Regional Builders Exchange

Structural Engineers Association of California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 920 (Cannella, Ch. 150, Stats. 2018) extended the sunset on the authorization for engineering, land surveying, or architecture licensees to form LLPs or foreign LLPs until January 1, 2026. As introduced, SB 920 would have removed the sunset entirely.

SB 284 (Cannella, Ch. 157, Stats. 2015) extended the sunset on the authorization for licensed engineers and land surveyors to operate as LLPs, from January 1, 2016, to January 1, 2019.

SB 560 (Gorell, Ch. 291, Stats. 2011) extended the sunset for architecture LLPs to January 1, 2019. As introduced, SB 560 would have removed the sunset entirely.

SB 1008 (Padilla, Ch. 634, Stats. 2010) authorized licensed engineers and land surveyors to organize and operate as LLPs, as specified, and required engineers and land surveyors organizing as LLPs to carry insurance liability coverage, as specified. These requirements were subject to a January 1, 2016, sunset.

AB 2914 (Leno, Ch. 426, Stats. 2006) extended the sunset date of architecture LLPs until January 1, 2012, and increased the amount of insurance that such LLPs must hold.

AB 1265 (Benoit, 2003) would have permitted professional engineers and land surveyors to organize as an LLP and would have required that, depending on the number of partners, the LLP have between \$500,000 and \$5 million in insurance. AB 1265 was held in this Committee.

AB 1596 (Shelley, Ch. 595, Stats. 2001) extended, to January 1, 2007, the sunset date for statutes permitting architects to organize as LLPs.

AB 469 (Cardoza, Ch. 504, Stats. 1998) authorized architects to form an LLP, provided the partnership had between \$500,000 and \$5 million in insurance, depending on the number of partners in the LLP, and the partnership had net worth of \$10 million or more. This bill included a January 1, 2002, sunset date.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 12, Noes 0)
Assembly Floor (Ayes 68, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Business and Professions Committee (Ayes 17, Noes 0)
