

1 A bill to be entitled
2 An act relating to the Board of Professional
3 Engineers; amending s. 471.011, F.S.; revising
4 fees; creating s. 471.038, F.S.; providing
5 legislative findings and intent; providing
6 definitions; creating the Florida Engineers
7 Management Corporation; providing for the
8 organization, powers, and duties of the
9 corporation; providing an appropriation;
10 providing for review and repeal of s. 471.038;
11 providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsections (3) and (5) of section 471.011,
16 Florida Statutes, are amended to read:

17 471.011 Fees.--

18 (3) The initial license fee shall not exceed\$125
19 ~~\$200~~.

20 (5) The biennial renewal fee shall not exceed\$125
21 ~~\$150~~.

22 Section 2. Section 471.038, Florida Statutes, is
23 created to read:

24 471.038 Florida Engineers Management Corporation.--

25 (1) This section may be cited as the "Florida
26 Engineers Management Corporation Act."

27 (2) As used in this section, the term:

28 (a) "Board" means the Board of Professional Engineers.

29 (b) "Board of Directors" means the board of directors
30 of the Florida Engineers Management Corporation.

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1 (c) "Corporation" means the Florida Engineers
2 Management Corporation.

3 (d) "Department" means the Department of Business and
4 Professional Regulation.

5 (e) "Secretary" means the Secretary of Business and
6 Professional Regulation.

7 (3)(a) It is the finding of the Legislature that the
8 privatization of certain functions that are performed by the
9 department for the board will encourage greater operational
10 and economic efficiency and, therefore, will benefit regulated
11 persons and the public.

12 (b) It is the intent of the Legislature that a single
13 nonprofit corporation be established to provide
14 administrative, investigative, and prosecutorial services to
15 the board and that no additional nonprofit corporation be
16 created for these purposes.

17 (c) It is further the intent of the Legislature that
18 the corporation assume, by July 1, 1998, all duties assigned
19 to it.

20 (4) The Florida Engineers Management Corporation is
21 created to provide administrative, investigative, and
22 prosecutorial services to the board in accordance with the
23 provisions of chapters 455 and 471. The corporation may hire
24 staff as necessary to carry out its functions. Such staff are
25 not public employees for the purposes of chapter 110 or
26 chapter 112. The provisions of s. 768.28 apply to the
27 corporation, which is deemed to be a corporation primarily
28 acting as an instrumentality of the state, but which is not an
29 agency within the meaning of s. 20.03(11). The corporation
30 shall:

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1 (a) Be a Florida corporation not-for-profit,
2 incorporated under the provisions of chapter 617.

3 (b) Provide administrative, investigative, and
4 prosecutorial services to the board in accordance with the
5 provisions of chapters 455 and 471.

6 (c) Receive, hold, and administer property and make
7 expenditures for the benefit of the board.

8 (d) Be approved by the board and the department to
9 operate for the benefit of the board and in the best interest
10 of the state.

11 (e) Operate under a fiscal year that begins on July 1
12 of each year and ends on June 30 of the following year.

13 (f) Have a seven-member board of directors, five of
14 whom are to be appointed by the board and must be registrants
15 regulated by the board and two of whom are to be appointed by
16 the secretary and must be lay persons not regulated by the
17 board. The corporation shall select its officers in accordance
18 with its bylaws. The members of the board of directors may be
19 removed by the board, with the concurrence of the department,
20 for the same reasons that a board member may be removed.

21 (g) Operate under a written contract with the
22 department which is approved by the board and renewed
23 annually. The initial contract must be entered into no later
24 than March 1, 1998. The contract must provide for:

25 1. Approval of the articles of incorporation and
26 bylaws of the corporation by the department and the board.

27 2. Submission by the corporation of an annual budget
28 that complies with board rules for approval by the board and
29 the department.

30 3. Annual certification by the board and the
31 department that the corporation is complying with the terms of

1 the contract in a manner consistent with the goals and
2 purposes of the board and in the best interest of the state.
3 This certification must be reported in the board's minutes.

4 4. Employment by the department of a contract
5 administrator to actively supervise the administrative,
6 investigative, and prosecutorial activities of the corporation
7 to ensure compliance with the contract and the provisions of
8 chapters 455 and 471 and to act as a liaison for the
9 department, the board, and the corporation to ensure the
10 effective operation of the corporation.

11 5. Funding of the corporation through appropriations
12 allocated to the regulation of professional engineers from the
13 Professional Regulation Trust Fund.

14 6. The reversion to the board, or the state if the
15 board ceases to exist, of moneys and property held in trust by
16 the corporation for the benefit of the board, if the
17 corporation is no longer approved to operate for the board or
18 the board ceases to exist.

19 7. The securing and maintaining by the corporation,
20 during the term of the contract and for all acts performed
21 during the term of the contract, of all liability insurance
22 coverages in an amount to be approved by the department to
23 defend, indemnify, and hold harmless the corporation and its
24 officers and employees, the department and its employees, and
25 the state against all claims arising from state and federal
26 laws. Such insurance coverage must be with insurers qualified
27 and doing business in the state. The corporation must provide
28 proof of insurance to the department. The department and its
29 employees and the state are exempt from and are not liable for
30 any sum of money which represents a deductible, which sums
31 shall be the sole responsibility of the corporation. Violation

1 of this subparagraph shall be grounds for terminating the
2 contract.

3 (h) Provide for an annual financial and compliance
4 audit of its financial accounts and records by an independent
5 certified public accountant in conjunction with the Auditor
6 General. The annual audit report must be submitted to the
7 board and the department for review and approval. Copies of
8 the audit must be submitted to the secretary and the
9 Legislature together with any other information requested by
10 the secretary, the board, or the Legislature.

11 (i) Submit to the secretary, the board, and the
12 Legislature, on or before January 1 of each year, a report on
13 the status of the corporation which includes, but is not
14 limited to, information concerning the programs and funds that
15 have been transferred to the corporation. The report must
16 include: the number of license applications received; the
17 number approved and denied and the number of licenses issued;
18 the number of examinations administered and the number of
19 applicants who passed or failed the examination; the number of
20 complaints received; the number determined to be legally
21 sufficient; the number dismissed; the number determined to
22 have probable cause; the number of administrative complaints
23 issued and the status of the complaints; and the number and
24 nature of disciplinary actions taken by the board.

25 (5) The corporation may not exercise any authority
26 specifically assigned to the board under chapter 455 or
27 chapter 471, including determining probable cause to pursue
28 disciplinary action against a licensee, taking final action on
29 license applications or in disciplinary cases, or adopting
30 administrative rules under chapter 120.

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1 (6) The department shall retain the independent
2 authority to open, investigate, or prosecute any cases or
3 complaints, as necessary to protect the public health, safety,
4 or welfare. In addition, the department shall retain sole
5 authority to issue emergency suspension or restriction orders
6 pursuant to s. 120.60 and to prosecute unlicensed activity
7 cases pursuant to ss. 455.228 and 455.2281.

8 (7) Corporation records are public records subject to
9 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
10 State Constitution; however, public records exemptions set
11 forth in ss. 455.217 and 455.229 for records created or
12 maintained by the department shall apply to records created or
13 maintained by the corporation. The exemptions set forth in s.
14 455.225, relating to complaints and information obtained
15 pursuant to an investigation by the department, shall apply to
16 such records created or obtained by the corporation only until
17 an investigation ceases to be active. For the purposes of this
18 subsection, an investigation is considered active so long as
19 the corporation or any law enforcement or administrative
20 agency is proceeding with reasonable dispatch and has a
21 reasonable, good-faith belief that it may lead to the filing
22 of administrative, civil, or criminal proceedings. An
23 investigation ceases to be active when the case is dismissed
24 prior to a finding of probable cause and the board has not
25 exercised its option to pursue the case or 10 days after the
26 board makes a determination regarding probable cause. All
27 information, records, and transcriptions regarding a complaint
28 that has been determined to be legally sufficient to state a
29 claim within the jurisdiction of the board become available to
30 the public when the investigation ceases to be active, except
31 information that is otherwise confidential or exempt from s.

1 119.07(1). However, in response to an inquiry about the
2 licensure status of an individual, the corporation shall
3 disclose the existence of an active investigation if the
4 nature of the violation under investigation involves the
5 potential for substantial physical or financial harm to the
6 public. The board shall designate by rule those violations
7 that involve the potential for substantial physical or
8 financial harm. The department and the board shall have access
9 to all records of the corporation, as necessary to exercise
10 their authority to approve and supervise the contract.

11 (8) The Office of Program Policy Analysis and
12 Governmental Accountability within the Office of the Auditor
13 General shall conduct a performance audit of the corporation
14 for the period beginning January 1, 1998, through January 1,
15 2000, and thereafter at the request of the Joint Legislative
16 Auditing Committee.

17 Section 3. If any provision of section 471.038,
18 Florida Statutes, is held to be unconstitutional or is held to
19 violate the state or federal anti-trust laws, the following
20 shall occur:

21 (1) The corporation shall cease and desist from
22 exercising any powers and duties enumerated in the act.

23 (2) The Department of Business and Professional
24 Regulation shall resume the performance of such activities.
25 The department shall regain and receive, hold, invest, and
26 administer property and make expenditures for the benefit of
27 the board.

28 (3) The Executive Office of the Governor,
29 notwithstanding chapter 216, Florida Statutes, is authorized
30 to reestablish positions, budget authority, and salary rate
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1 necessary to carry out the department's responsibilities
2 related to the regulation of professional engineers.

3 Section 4. In addition to moneys appropriated for the
4 operation of the State Board of Professional Engineers, the
5 sum of \$646,000 is appropriated from the account of the State
6 Board of Professional Engineers in the Professional Regulation
7 Trust Fund to the Department of Business and Professional
8 Regulation, of which \$586,000 shall be released to the Florida
9 Engineers Management Corporation as needed for start-up costs
10 and \$60,000 shall be used to fund one O.P.S. position to
11 assist with preparing the contract required by section
12 471.038, Florida Statutes.

13 Section 5. This act shall take effect July 1, 1997,
14 but section 471.038, Florida Statutes, shall stand repealed on
15 October 1, 2000. The Legislature shall review the effect of
16 this act in the regular session immediately prior to the
17 repeal date.