

1  
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.  
12

13 Be It Enacted by the Legislature of the State of Florida:  
14

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.  
31

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:

31

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.

31

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  
31

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.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31