

By the Committee on Regulated Industries

315-259-00

1 A bill to be entitled
2 An act relating to the Florida Engineers
3 Management Corporation Act; amending s.
4 471.038, F.S.; providing for meetings of the
5 board of directors of the corporation to be
6 open to the public; deleting obsolete
7 provisions; deleting a requirement that the
8 Office of Program Policy Analysis and
9 Government Accountability conduct an audit of
10 the corporation at the request of the Joint
11 Legislative Auditing Committee; abrogating the
12 repeal of s. 471.038, F.S., relating to the
13 powers and duties of the corporation,
14 notwithstanding s. 5, ch. 97-312, Laws of
15 Florida; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 471.038, Florida Statutes, is
20 amended to read:

21 471.038 Florida Engineers Management Corporation.--

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

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

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

26 (b) "Board of directors" means the board of directors
27 of the Florida Engineers Management Corporation.

28 (c) "Corporation" means the Florida Engineers
29 Management Corporation.

30 (d) "Department" means the Department of Business and
31 Professional Regulation.

1 (e) "Secretary" means the Secretary of Business and
2 Professional Regulation.

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

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

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

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

27 (a) Be a Florida corporation not for profit,
28 incorporated under the provisions of chapter 617.

29 (b) Provide administrative, investigative, and
30 prosecutorial services to the board in accordance with the
31 provisions of part I of chapter 455 and this chapter.

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

3 (d) Be approved by the board and the department to
4 operate for the benefit of the board and in the best interest
5 of the state.

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

8 (f) Have a seven-member board of directors, five of
9 whom are to be appointed by the board and must be registrants
10 regulated by the board and two of whom are to be appointed by
11 the secretary and must be laypersons not regulated by the
12 board. The corporation shall select its officers in accordance
13 with its bylaws. The members of the board of directors may be
14 removed by the board, with the concurrence of the department,
15 for the same reasons that a board member may be removed.

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

20 1. Approval of the articles of incorporation and
21 bylaws of the corporation by the department and the board.

22 2. Submission by the corporation of an annual budget
23 that complies with board rules for approval by the board and
24 the department.

25 3. Annual certification by the board and the
26 department that the corporation is complying with the terms of
27 the contract in a manner consistent with the goals and
28 purposes of the board and in the best interest of the state.
29 This certification must be reported in the board's minutes.

30 4. Employment by the department of a contract
31 administrator to actively supervise the administrative,

1 | investigative, and prosecutorial activities of the corporation
2 | to ensure compliance with the contract and the provisions of
3 | part I of chapter 455 and this chapter and to act as a liaison
4 | for the department, the board, and the corporation to ensure
5 | the effective operation of the corporation.

6 | 5. Funding of the corporation through appropriations
7 | allocated to the regulation of professional engineers from the
8 | Professional Regulation Trust Fund.

9 | 6. The reversion to the board, or the state if the
10 | board ceases to exist, of moneys and property held in trust by
11 | the corporation for the benefit of the board, if the
12 | corporation is no longer approved to operate for the board or
13 | the board ceases to exist.

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

29 | (h) Provide for an annual financial and compliance
30 | audit of its financial accounts and records by an independent
31 | certified public accountant in conjunction with the Auditor

1 General. The annual audit report must be submitted to the
2 board and the department for review and approval. Copies of
3 the audit must be submitted to the secretary and the
4 Legislature together with any other information requested by
5 the secretary, the board, or the Legislature.

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

20 (5) The corporation may not exercise any authority
21 specifically assigned to the board under part I of chapter 455
22 or this chapter, including determining probable cause to
23 pursue disciplinary action against a licensee, taking final
24 action on license applications or in disciplinary cases, or
25 adopting administrative rules under chapter 120.

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

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

1 public. The board shall designate by rule those violations
2 that involve the potential for substantial physical or
3 financial harm. The department and the board shall have access
4 to all records of the corporation, as necessary to exercise
5 their authority to approve and supervise the contract.

6 (8) All meetings of the board of directors are public
7 meetings and are subject to s. 286.011 and s. 24, Art. I of
8 the State Constitution.~~The Office of Program Policy Analysis~~
9 ~~and Governmental Accountability within the Office of the~~
10 ~~Auditor General shall conduct a performance audit of the~~
11 ~~corporation for the period beginning January 1, 1998, through~~
12 ~~January 1, 2000, and thereafter at the request of the Joint~~
13 ~~Legislative Auditing Committee.~~

14 Section 2. Notwithstanding section 5 of chapter
15 97-312, Laws of Florida, section 471.038, Florida Statutes,
16 shall not stand repealed on October 1, 2000, as scheduled by
17 such law, but section 471.038, Florida Statutes, as amended by
18 this act, is revived and readopted.

19 Section 3. This act shall take effect upon becoming a
20 law.

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23 SENATE SUMMARY

24 Abrogates the repeal of the Florida Engineers Management
25 Corporation Act scheduled for October 1, 2000. Provides
26 for meetings of the board of directors of the corporation
27 to be subject to the public meetings law. Deletes a
28 requirement that the Office of Program Policy Analysis
29 and Governmental Accountability conduct audits of the
30 corporation after January 1, 2000, at the request of the
31 Joint Legislative Auditing Committee.