

By the Committee on Regulated Industries

315-1853-00

1 A bill to be entitled
2 An act relating to the Florida Engineers
3 Management Corporation; amending s. 471.038,
4 F.S., the "Florida Engineers Management
5 Corporation Act"; providing purpose; providing
6 for per diem and travel expenses for the board
7 of directors and staff of the management
8 corporation; providing for termination of
9 initial appointments and for new appointments
10 to the board of directors; revising powers and
11 duties of the management corporation; providing
12 additional requirements of the contract between
13 the management corporation and the Department
14 of Business and Professional Regulation;
15 changing the submission date of the management
16 corporation's annual status report; specifying
17 that meetings of the board of directors are
18 open to the public as provided by law;
19 providing for maintenance of board records by
20 the management corporation; providing
21 rulemaking authority to the board to ensure the
22 security of examinations; eliminating a
23 provision requiring the Office of Program
24 Policy Analysis and Government Accountability
25 to conduct performance audits at the request of
26 the Joint Legislative Auditing Committee;
27 abrogating the repeal of s. 471.038, F.S., the
28 "Florida Engineers Management Corporation Act,"
29 notwithstanding s. 5, ch. 97-312, Laws of
30 Florida; amending s. 471.005, F.S.; providing
31 definitions; revising cross-references;

1 amending s. 471.0035, F.S.; conforming
2 cross-references; amending ss. 471.011,
3 471.015, 471.017, 471.021, 471.023, 471.033,
4 F.S.; transferring to the management
5 corporation duties of the department relating
6 to issuance, reissuance, and renewal of
7 licenses, certifications, and temporary
8 registrations and to purchase of the licensure
9 examination; revising cross-references;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 471.038, Florida Statutes, is
15 amended to read:

16 471.038 Florida Engineers Management Corporation.--

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

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

20 ~~(a) "Board" means the Board of Professional Engineers.~~

21 ~~(b) "Board of directors" means the board of directors
22 of the Florida Engineers Management Corporation.~~

23 ~~(c) "Corporation" means the Florida Engineers
24 Management Corporation.~~

25 ~~(d) "Department" means the Department of Business and
26 Professional Regulation.~~

27 ~~(e) "Secretary" means the Secretary of Business and
28 Professional Regulation.~~

29 (2)(3)(a) It is the finding of the Legislature that
30 the privatization of certain functions that are performed by
31 the department for the board will encourage greater

1 ~~operational and economic efficiency and, therefore, will~~
2 ~~benefit regulated persons and the public.~~

3 **(b)** The purpose of this section is to create a
4 public-private partnership by providing ~~it is the intent of~~
5 ~~the Legislature~~ that a single nonprofit corporation be
6 established to provide administrative, investigative, and
7 prosecutorial services to the board and that no additional
8 nonprofit corporation be created for these purposes.

9 ~~(c) It is further the intent of the Legislature that~~
10 ~~the corporation assume, by July 1, 1998, all duties assigned~~
11 ~~to it.~~

12 **(3)(4)** The Florida Engineers Management Corporation is
13 created to provide administrative, investigative, and
14 prosecutorial services to the board in accordance with the
15 provisions of part I of chapter 455 and this chapter. The
16 management corporation may hire staff as necessary to carry
17 out its functions. Such staff are not public employees for the
18 purposes of chapter 110 or chapter 112, except that the board
19 of directors and the staff are subject to the provisions of s.
20 112.061. The provisions of s. 768.28 apply to the management
21 corporation, which is deemed to be a corporation primarily
22 acting as an instrumentality of the state, but which is not an
23 agency within the meaning of s. 20.03(11). The management
24 corporation shall:

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

27 (b) Provide administrative, investigative, and
28 prosecutorial services to the board in accordance with the
29 provisions of part I of chapter 455, and this chapter, and the
30 contract required by this section.

31

1 (c) Receive, hold, and administer property and make
2 only prudent expenditures directly related to the
3 responsibilities for the benefit of the board, and in
4 accordance with the contract required by this section.

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

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

10 (f) Have a seven-member board of directors, five of
11 whom are to be appointed by the board and must be registrants
12 regulated by the board and two of whom are to be appointed by
13 the secretary and must be laypersons not regulated by the
14 board. All initial appointments shall expire on October 31,
15 2000. Current members may be appointed to one additional term
16 that complies with the provisions of this paragraph. Two
17 members shall be appointed for 2 years, three members shall be
18 appointed for 3 years, and two members shall be appointed for
19 4 years. One layperson shall be appointed to a 3-year term and
20 one layperson shall be appointed to a 4-year term. Thereafter,
21 all appointments shall be for 4-year terms. No new member
22 shall serve more than two consecutive terms. Failure to attend
23 three consecutive meetings shall be deemed a resignation from
24 the board, and the vacancy shall be filled by a new
25 appointment.

26 (g) ~~The corporation shall~~ Select its officers in
27 accordance with its bylaws. The members of the board of
28 directors may be removed by the board, with the concurrence of
29 the department, for the same reasons that a board member may
30 be removed.

31

1 (h) Use a portion of the interest derived from the
2 management corporation account to offset the costs associated
3 with the use of credit cards for payment of fees by applicants
4 or licensees.

5 (i)(g) Operate under an annual a written contract with
6 the department which is approved by the board ~~and renewed~~
7 ~~annually. The initial contract must be entered into no later~~
8 ~~than March 1, 1998.~~ The contract must provide for, but is not
9 limited to:

10 1. Approval of the articles of incorporation and
11 bylaws of the management corporation by the department and the
12 board.

13 2. Submission by the management corporation of an
14 annual budget that complies with board rules for approval by
15 the board and the department.

16 3. Annual certification by the board and the
17 department that the management corporation is complying with
18 the terms of the contract in a manner consistent with the
19 goals and purposes of the board and in the best interest of
20 the state. This certification must be reported in the board's
21 minutes. The contract must also provide for methods and
22 mechanisms to resolve any situation in which the certification
23 process determines noncompliance.

24 4. Employment by the department of a contract
25 administrator to actively supervise the administrative,
26 investigative, and prosecutorial activities of the management
27 corporation to ensure compliance with the contract and the
28 provisions of part I of chapter 455 and this chapter and to
29 act as a liaison for the department, the board, and the
30 management corporation to ensure the effective operation of
31 the management corporation.

1 5. Funding of the management corporation through
2 appropriations allocated to the regulation of professional
3 engineers from the Professional Regulation Trust Fund.

4 6. The reversion to the board, or the state if the
5 board ceases to exist, of moneys, records, data,and property
6 held in trust by the management corporation for the benefit of
7 the board, if the management corporation is no longer approved
8 to operate for the board or the board ceases to exist. All
9 records and data in a computerized database shall be returned
10 to the department in a form that is compatible with the
11 computerized database of the department.

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

28 8. Payment by the management corporation, out of its
29 allocated budget, to the department of all costs of
30 representation by the board counsel, including salary and
31

1 benefits, travel, and any other compensation traditionally
2 paid by the department to other board counsels.

3 9. Payment by the management corporation, out of its
4 allocated budget, to the department of all costs incurred by
5 the management corporation or the board for the Division of
6 Administrative Hearings of the Department of Management
7 Services and any other cost for utilization of these state
8 services.

9 10. Payment by the management corporation, out of its
10 allocated budget, to the department of all costs associated
11 with the contract administrator of the department, including
12 salary and benefits, travel, and other related costs
13 traditionally paid to state employees.

14 (j)(h) Provide for an annual financial and compliance
15 audit of its financial accounts and records by an independent
16 certified public accountant in accordance with generally
17 accepted government auditing standards ~~conjunction with the~~
18 ~~Auditor General~~. The annual audit report shall include a
19 detailed supplemental schedule of expenditures for each
20 expenditure category and a management letter.The annual audit
21 report must be submitted to the board, and the department, and
22 the Auditor General for review ~~and approval~~. ~~Copies of the~~
23 ~~audit must be submitted to the secretary and the Legislature~~
24 ~~together with any other information requested by the~~
25 ~~secretary, the board, or the Legislature.~~

26 (k)(i) Submit to the secretary, the board, and the
27 Legislature, on or before October ~~January~~ 1 of each year, a
28 report on the status of the management corporation which
29 includes, but is not limited to, information concerning the
30 programs and funds that have been transferred to the
31 management corporation. The report must include: the number of

1 license applications received; the number approved and denied
2 and the number of licenses issued; the number of examinations
3 administered and the number of applicants who passed or failed
4 the examination; the number of complaints received; the number
5 determined to be legally sufficient; the number dismissed; the
6 number determined to have probable cause; the number of
7 administrative complaints issued and the status of the
8 complaints; and the number and nature of disciplinary actions
9 taken by the board.

10 (1) In order to facilitate efficient and
11 cost-effective regulation, develop, with the department,
12 performance standards and measurable outcomes for the board to
13 adopt by rule.

14 ~~(4)(5)~~ The management corporation may not exercise any
15 authority specifically assigned to the board under part I of
16 chapter 455 or this chapter, including determining probable
17 cause to pursue disciplinary action against a licensee, taking
18 final action on license applications or in disciplinary cases,
19 or adopting administrative rules under chapter 120.

20 ~~(5)(6)~~ The department shall retain the independent
21 authority to open, investigate, or prosecute any cases or
22 complaints, as necessary to protect the public health, safety,
23 or welfare. In addition, the department shall retain sole
24 authority to issue emergency suspension or restriction orders
25 pursuant to s. 120.60 and to prosecute unlicensed activity
26 cases pursuant to ss. 455.228 and 455.2281.

27 ~~(6)(7)~~ Management corporation records are public
28 records subject to the provisions of s. 119.07(1) and s.
29 24(a), Art. I of the State Constitution; however, public
30 records exemptions set forth in ss. 455.217 and 455.229 for
31 records created or maintained by the department shall apply to

1 records created or maintained by the management corporation.
2 In addition, all meetings of the board of directors are open
3 to the public in accordance with s. 286.011 and s. 24(b), Art.
4 I of the State Constitution.The exemptions set forth in s.
5 455.225, relating to complaints and information obtained
6 pursuant to an investigation by the department, shall apply to
7 such records created or obtained by the management corporation
8 only until an investigation ceases to be active. For the
9 purposes of this subsection, an investigation is considered
10 active so long as the management corporation or any law
11 enforcement or administrative agency is proceeding with
12 reasonable dispatch and has a reasonable, good faith belief
13 that it may lead to the filing of administrative, civil, or
14 criminal proceedings. An investigation ceases to be active
15 when the case is dismissed prior to a finding of probable
16 cause and the board has not exercised its option to pursue the
17 case or 10 days after the board makes a determination
18 regarding probable cause. All information, records, and
19 transcriptions regarding a complaint that has been determined
20 to be legally sufficient to state a claim within the
21 jurisdiction of the board become available to the public when
22 the investigation ceases to be active, except information that
23 is otherwise confidential or exempt from s. 119.07(1).
24 However, in response to an inquiry about the licensure status
25 of an individual, the management corporation shall disclose
26 the existence of an active investigation if the nature of the
27 violation under investigation involves the potential for
28 substantial physical or financial harm to the public. The
29 board shall designate by rule those violations that involve
30 the potential for substantial physical or financial harm. The
31 department and the board shall have access to all records of

1 the management corporation, as necessary to exercise their
2 authority to approve and supervise the contract.

3 (7) The management corporation is the sole source and
4 depository for the records of the board, including all
5 historical information and records. The management corporation
6 shall maintain those records in accordance with the guidelines
7 of the Department of State and shall not destroy any records
8 prior to the limits imposed by the Department of State.

9 (8) The board shall provide by rule for the procedures
10 the management corporation must follow to ensure that all
11 licensure examinations are secure while under the
12 responsibility of the management corporation and that there is
13 an appropriate level of monitoring during the licensure
14 examinations.~~The Office of Program Policy Analysis and~~
15 ~~Governmental Accountability within the Office of the Auditor~~
16 ~~General shall conduct a performance audit of the corporation~~
17 ~~for the period beginning January 1, 1998, through January 1,~~
18 ~~2000, and thereafter at the request of the Joint Legislative~~
19 ~~Auditing Committee.~~

20 Section 2. Notwithstanding section 5 of chapter
21 97-312, Laws of Florida, section 471.038, Florida Statutes,
22 shall not stand repealed on October 1, 2000, as scheduled by
23 such law, but section 471.038, Florida Statutes, as amended by
24 this act, is revived and readopted.

25 Section 3. Section 471.005, Florida Statutes, is
26 amended to read:

27 471.005 Definitions.--As used in this chapter ~~ss.~~
28 ~~471.001-471.037~~, the term:

29 (1) "Board" means the Board of Professional Engineers.

30 (2) "Board of directors" means the board of directors
31 of the Florida Engineers Management Corporation.

1 ~~(3)(2)~~ "Certificate of authorization" means a license
2 to practice engineering issued by the management corporation
3 ~~department~~ to a corporation or partnership.

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

6 ~~(5)(4)~~ "Engineer" includes the terms "professional
7 engineer" and "registered engineer" and means a person who is
8 registered to engage in the practice of engineering under this
9 chapter ss. ~~471.001-471.037~~.

10 ~~(6)(5)~~ "Engineer intern" means a person who has
11 graduated from, or is in the final year of, an engineering
12 curriculum approved by the board and has passed the
13 fundamentals of engineering examination as provided by rules
14 adopted by the board.

15 ~~(7)(6)~~ "Engineering" includes the term "professional
16 engineering" and means any service or creative work, the
17 adequate performance of which requires engineering education,
18 training, and experience in the application of special
19 knowledge of the mathematical, physical, and engineering
20 sciences to such services or creative work as consultation,
21 investigation, evaluation, planning, and design of engineering
22 works and systems, planning the use of land and water,
23 teaching of the principles and methods of engineering design,
24 engineering surveys, and the inspection of construction for
25 the purpose of determining in general if the work is
26 proceeding in compliance with drawings and specifications, any
27 of which embraces such services or work, either public or
28 private, in connection with any utilities, structures,
29 buildings, machines, equipment, processes, work systems,
30 projects, and industrial or consumer products or equipment of
31 a mechanical, electrical, hydraulic, pneumatic, or thermal

1 nature, insofar as they involve safeguarding life, health, or
2 property; and includes such other professional services as may
3 be necessary to the planning, progress, and completion of any
4 engineering services. A person who practices any branch of
5 engineering; who, by verbal claim, sign, advertisement,
6 letterhead, or card, or in any other way, represents himself
7 or herself to be an engineer or, through the use of some other
8 title, implies that he or she is an engineer or that he or she
9 is registered under this chapter ss. 471.001-471.037; or who
10 holds himself or herself out as able to perform, or does
11 perform, any engineering service or work or any other service
12 designated by the practitioner which is recognized as
13 engineering shall be construed to practice or offer to
14 practice engineering within the meaning and intent of this
15 chapter ss. 471.001-471.037.

16 (8)(7) "License" means the registration of engineers
17 or certification of businesses to practice engineering in this
18 state.

19 (9) "Management corporation" means the Florida
20 Engineers Management Corporation.

21 (10) "Secretary" means the Secretary of Business and
22 Professional Regulation.

23 Section 4. Section 471.0035, Florida Statutes, is
24 amended to read:

25 471.0035 Instructors in postsecondary educational
26 institutions; exemption from registration requirement.--For
27 the sole purpose of teaching the principles and methods of
28 engineering design, notwithstanding the provisions of s.
29 471.005(7)(6), a person employed by a public postsecondary
30 educational institution, or by an independent postsecondary
31 educational institution licensed or exempt from licensure

1 pursuant to the provisions of chapter 246, is not required to
2 register under the provisions of this chapter ~~ss.~~
3 ~~471.001-471.037~~ as a registered engineer.

4 Section 5. Subsection (2) of section 471.011, Florida
5 Statutes, is amended to read:

6 471.011 Fees.--

7 (2) The initial application and examination fee shall
8 not exceed \$125 plus the actual per applicant cost to the
9 management corporation ~~department~~ to purchase the examination
10 from the National Council of Examiners for Engineering and
11 Surveying ~~Engineering Examiners~~ or a similar national
12 organization. The examination fee shall be in an amount which
13 covers the cost of obtaining and administering the examination
14 and shall be refunded if the applicant is found ineligible to
15 sit for the examination. The application fee shall be
16 nonrefundable.

17 Section 6. Subsections (1) and (4) of section 471.015,
18 Florida Statutes, are amended to read:

19 471.015 Licensure.--

20 (1) The management corporation ~~department~~ shall issue
21 a license to any applicant who the board certifies is
22 qualified to practice engineering and who has passed the
23 licensing examination.

24 (4) The management corporation ~~department~~ shall not
25 issue a license by endorsement to any applicant who is under
26 investigation in another state for any act that would
27 constitute a violation of this chapter ~~ss. 471.001-471.037~~ or
28 of part I of chapter 455 until such time as the investigation
29 is complete and disciplinary proceedings have been terminated.

30 Section 7. Subsection (1) of section 471.017, Florida
31 Statutes, is amended to read:

1 471.017 Renewal of license.--

2 (1) The management corporation ~~department~~ shall renew
3 a license upon receipt of the renewal application and fee.

4 Section 8. Subsections (1) and (2) of section 471.021,
5 Florida Statutes, are amended to read:

6 471.021 Engineers and firms of other states; temporary
7 certificates to practice in Florida.--

8 (1) Upon approval of the board and payment of the fee
9 set in s. 471.011, the management corporation ~~department~~ shall
10 issue ~~grant~~ a temporary registration for work on one specified
11 project in this state for a period not to exceed 1 year to an
12 engineer holding a certificate to practice in another state,
13 provided Florida registrants are similarly permitted to engage
14 in work in such state and provided that the engineer be
15 qualified for licensure by endorsement.

16 (2) Upon approval by the board and payment of the fee
17 set in s. 471.011, the management corporation ~~department~~ shall
18 issue ~~grant~~ a temporary certificate of authorization for work
19 on one specified project in this state for a period not to
20 exceed 1 year to an out-of-state corporation, partnership, or
21 firm, provided one of the principal officers of the
22 corporation, one of the partners of the partnership, or one of
23 the principals in the fictitiously named firm has obtained a
24 temporary certificate of registration in accordance with
25 subsection (1).

26 Section 9. Subsection (1) of section 471.023, Florida
27 Statutes, is amended to read:

28 471.023 Certification of partnerships and
29 corporations.--

30 (1) The practice of, or the offer to practice,
31 engineering by registrants through a corporation or

1 partnership offering engineering services to the public or by
2 a corporation or partnership offering said services to the
3 public through registrants under this chapter ss.
4 ~~471.001-471.037~~ as agents, employees, officers, or partners is
5 permitted only if the firm possesses a certification issued by
6 the management corporation ~~department~~ pursuant to
7 qualification by the board, subject to the provisions of this
8 chapter ss. ~~471.001-471.037~~. One or more of the principal
9 officers of the corporation or one or more partners of the
10 partnership and all personnel of the corporation or
11 partnership who act in its behalf as engineers in this state
12 shall be registered as provided by this chapter ss.
13 ~~471.001-471.037~~. All final drawings, specifications, plans,
14 reports, or documents involving practices registered under
15 this chapter ss. ~~471.001-471.037~~ which are prepared or
16 approved for the use of the corporation or partnership or for
17 public record within the state shall be dated and shall bear
18 the signature and seal of the registrant who prepared or
19 approved them. Nothing in this section shall be construed to
20 mean that a certificate of registration to practice
21 engineering shall be held by a corporation. Nothing herein
22 prohibits corporations and partnerships from joining together
23 to offer engineering services to the public, provided each
24 corporation or partnership otherwise meets the requirements of
25 this section. No corporation or partnership shall be relieved
26 of responsibility for the conduct or acts of its agents,
27 employees, or officers by reason of its compliance with this
28 section, nor shall any individual practicing engineering be
29 relieved of responsibility for professional services performed
30 by reason of his or her employment or relationship with a
31 corporation or partnership.

1 Section 10. Subsection (4) of section 471.033, Florida
2 Statutes, is amended to read:

3 471.033 Disciplinary proceedings.--

4 (4) The management corporation ~~department~~ shall
5 reissue the license of a disciplined engineer or business upon
6 certification by the board that the disciplined person has
7 complied with all of the terms and conditions set forth in the
8 final order.

9 Section 11. This act shall take effect July 1, 2000.

10
11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 220

14 The Committee Substitute:

- 15 - Subjects the Corporation's board of directors and staff
16 to the travel and per diem provisions of s. 112.061,
17 F.S.
- 17 - Requires that the Corporation pay the Department of
18 Business and Professional Regulation (Department) for
19 specified costs associated with the regulatory services.
- 19 - Requires the Corporation to develop, in conjunction with
20 the Department, performance standards and measurable
21 outcomes, which the Board is to adopt by rule.
- 21 - Transfers to the Corporation the duties of the
22 Department relating to issuance, reissuance, and renewal
23 of licenses, certifications, and temporary registrations
24 and to purchase of the licensure examination.
- 24 - Requires the Board to provide by rule the security
25 procedures, which the Corporation is to follow to ensure
26 the security of licensure examinations.
- 26 - Establishes and phases in staggered terms for the
27 Corporation's Board of Directors.