

By Senator Clary

4-33A-03

1 A bill to be entitled
 2 An act relating to engineering; amending s.
 3 471.013, F.S.; revising examination
 4 requirements; amending s. 471.015, F.S.;
 5 conforming provisions; amending s. 471.023,
 6 F.S.; revising terminology relating to legal
 7 entities involved in offering engineering
 8 services; amending s. 471.033, F.S.; providing
 9 for the imposition of restitution as a penalty
 10 for disciplinary violations; amending s.
 11 471.038, F.S.; deleting obsolete language;
 12 deleting certain management powers and duties
 13 of the Department of Business and Professional
 14 Regulation over the Florida Engineers
 15 Management Corporation; deleting a bond
 16 requirement for certain employees of the
 17 corporation; revising the date an annual report
 18 is due; transferring certain functions of the
 19 department to the board and establishing
 20 additional enforcement powers for the board;
 21 requiring a report; providing an effective
 22 date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (1) of section 471.013, Florida
 27 Statutes, is amended to read:
 28 471.013 Examinations; prerequisites.--
 29 (1)(a) A person shall be entitled to take an
 30 examination for the purpose of determining whether she or he
 31

1 is qualified to practice in this state as an engineer if the
2 person is of good moral character and:

3 1. Is a graduate from an approved engineering
4 curriculum of 4 years or more in a school, college, or
5 university which has been approved by the board and has a
6 record of 4 years of active engineering experience of a
7 character indicating competence to be in responsible charge of
8 engineering;

9 2. Is a graduate of an approved engineering technology
10 curriculum of 4 years or more in a school, college, or
11 university within the State University System, having been
12 enrolled or having graduated prior to July 1, 1979, and has a
13 record of 4 years of active engineering experience of a
14 character indicating competence to be in responsible charge of
15 engineering; or

16 3. Has, in lieu of such education and experience
17 requirements, 10 years or more of active engineering work of a
18 character indicating that the applicant is competent to be
19 placed in responsible charge of engineering. However, this
20 subparagraph does not apply unless such person notifies the
21 department before July 1, 1984, that she or he was engaged in
22 such work on July 1, 1981.

23
24 The board shall adopt rules providing for the review and
25 approval of schools or colleges and the courses of study in
26 engineering in such schools and colleges. The rules shall be
27 based on the educational requirements for engineering as
28 defined in s. 471.005. The board may adopt rules providing
29 for the acceptance of the approval and accreditation of
30 schools and courses of study by a nationally accepted
31 accreditation organization.

1 (b) A person shall be entitled to take the
2 fundamentals ~~an~~ examination for the purpose of determining
3 whether she or he is qualified to practice in this state as an
4 engineer intern if she or he is in the final year of, or is a
5 graduate of, an approved engineering curriculum in a school,
6 college, or university approved by the board.

7 (c) A person shall not be entitled to take the
8 principles and practice ~~part of the~~ examination until that
9 person has successfully completed the fundamentals
10 examination.

11 (d) ~~On or after October 1, 1992,~~ Every applicant who
12 is qualified to take ~~any part of the~~ fundamentals examination
13 or the principles and practice examination shall be allowed to
14 take either examination ~~any one part~~ five times,
15 notwithstanding the number of times either examination ~~that~~
16 ~~part~~ has been previously failed. If an applicant fails either
17 ~~any part of the~~ examination ~~taken after October 1, 1992,~~ five
18 times, the board shall require the applicant to complete
19 additional college-level education courses in the areas of
20 deficiency, as determined by the board, as a condition of
21 future eligibility to take that ~~the~~ examination.

22 Section 2. Section 471.015, Florida Statutes, is
23 amended to read:

24 471.015 Licensure.--

25 (1) The management corporation shall issue a license
26 to any applicant who the board certifies is qualified to
27 practice engineering and who has passed the fundamentals
28 examination and the principles and practice licensing
29 examination.

30 (2) The board shall certify for licensure any
31 applicant who satisfies the requirements of s. 471.013. The

1 board may refuse to certify any applicant who has violated any
2 of the provisions of s. 471.031.

3 (3) The board shall certify as qualified for a license
4 by endorsement an applicant who:

5 (a) Qualifies to take the fundamentals examination and
6 the principles and practice examination as set forth in s.
7 471.013, has passed a United States national, regional, state,
8 or territorial licensing examination that is substantially
9 equivalent to the fundamentals examination and principles and
10 practice examination required by s. 471.013, and has satisfied
11 the experience requirements set forth in s. 471.013; or

12 (b) Holds a valid license to practice engineering
13 issued by another state or territory of the United States, if
14 the criteria for issuance of the license were substantially
15 the same as the licensure criteria that existed in this state
16 at the time the license was issued.

17 (4) The management corporation shall not issue a
18 license by endorsement to any applicant who is under
19 investigation in another state for any act that would
20 constitute a violation of this chapter or of chapter 455 until
21 such time as the investigation is complete and disciplinary
22 proceedings have been terminated.

23 (5)(a) The board shall deem that an applicant who
24 seeks licensure by endorsement has passed an examination
25 substantially equivalent to ~~part I of the~~ fundamentals
26 ~~engineering~~ examination when such applicant:

27 1. Has held a valid professional engineer's license in
28 another state for 15 years and has had 20 years of continuous
29 professional-level engineering experience;

30 2. Has received a doctorate degree in engineering from
31 an institution that has an undergraduate engineering degree

1 program which is accredited by the Accreditation Board for
2 Engineering Technology; or

3 3. Has received a doctorate degree in engineering and
4 has taught engineering full time for at least 3 years, at the
5 baccalaureate level or higher, after receiving that degree.

6 (b) The board shall deem that an applicant who seeks
7 licensure by endorsement has passed an examination
8 substantially equivalent to ~~part I and part II~~ of the
9 fundamentals examination and the principles and practices
10 ~~engineering~~ examination when such applicant has held a valid
11 professional engineer's license in another state for 25 years
12 and has had 30 years of continuous professional-level
13 engineering experience.

14 (6) The board may require a personal appearance by any
15 applicant for licensure under this chapter. Any applicant of
16 whom a personal appearance is required must be given adequate
17 notice of the time and place of the appearance and provided
18 with a statement of the purpose of and reasons requiring the
19 appearance.

20 (7) The board shall, by rule, establish qualifications
21 for certification of licensees as special inspectors of
22 threshold buildings, as defined in ss. 553.71 and 553.79, and
23 shall compile a list of persons who are certified. A special
24 inspector is not required to meet standards for certification
25 other than those established by the board, and the fee owner
26 of a threshold building may not be prohibited from selecting
27 any person certified by the board to be a special inspector.
28 The board shall develop minimum qualifications for the
29 qualified representative of the special inspector who is
30 authorized to perform inspections of threshold buildings on
31 behalf of the special inspector under s. 553.79.

1 Section 3. Section 471.023, Florida Statutes, is
2 amended to read:

3 471.023 Certification of business organizations
4 ~~partnerships and corporations~~.--

5 (1) The practice of, or the offer to practice,
6 engineering by licensees ~~through a corporation or partnership~~
7 offering engineering services to the public through a business
8 organization, including a partnership, corporation, business
9 trust, or other legal entity or by a business organization,
10 including a corporation, ~~or~~ partnership, business trust, or
11 other legal entity offering such ~~said~~ services to the public
12 through licensees under this chapter as agents, employees,
13 officers, or partners is permitted only if the business
14 organization ~~firm~~ possesses a certification issued by the
15 management corporation pursuant to qualification by the board,
16 subject to the provisions of this chapter. One or more of the
17 principal officers of the business organization ~~corporation~~ or
18 one or more partners of the partnership and all personnel of
19 the business organization ~~corporation or partnership~~ who act
20 in its behalf as engineers in this state shall be licensed as
21 provided by this chapter. All final drawings, specifications,
22 plans, reports, or documents involving practices licensed
23 under this chapter which are prepared or approved for the use
24 of the business organization ~~corporation or partnership~~ or for
25 public record within the state shall be dated and shall bear
26 the signature and seal of the licensee who prepared or
27 approved them. Nothing in this section shall be construed to
28 mean that a license to practice engineering shall be held by a
29 business organization ~~corporation~~. Nothing herein prohibits
30 business organizations ~~corporations and partnerships~~ from
31 joining together to offer engineering services to the public,

1 ~~if provided~~ each business organization ~~corporation or~~
2 ~~partnership~~ otherwise meets the requirements of this section.
3 No business organization ~~corporation or partnership~~ shall be
4 relieved of responsibility for the conduct or acts of its
5 agents, employees, or officers by reason of its compliance
6 with this section, nor shall any individual practicing
7 engineering be relieved of responsibility for professional
8 services performed by reason of his or her employment or
9 relationship with a business organization ~~corporation or~~
10 ~~partnership~~.

11 (2) For the purposes of this section, a certificate of
12 authorization shall be required for any business organization
13 ~~a corporation, partnership, association, or other person~~
14 practicing under a fictitious name, offering engineering
15 services to the public. However, when an individual is
16 practicing engineering in his or her own given name, he or she
17 shall not be required to be licensed under this section.

18 (3) The fact that a licensed engineer practices
19 through a business organization ~~does corporation or~~
20 ~~partnership~~ shall not relieve the licensee from personal
21 liability for negligence, misconduct, or wrongful acts
22 committed by him or her. Partnerships and all partners shall
23 be jointly and severally liable for the negligence,
24 misconduct, or wrongful acts committed by their agents,
25 employees, or partners while acting in a professional
26 capacity. Any officer, agent, or employee of a business
27 organization other than a partnership ~~corporation~~ shall be
28 personally liable and accountable only for negligent acts,
29 wrongful acts, or misconduct committed by him or her or
30 committed by any person under his or her direct supervision
31 and control, while rendering professional services on behalf

1 of the business organization ~~corporation~~. The personal
2 liability of a shareholder or owner of a business organization
3 ~~corporation~~, in his or her capacity as shareholder or owner,
4 shall be no greater than that of a shareholder-employee of a
5 corporation incorporated under chapter 607. The business
6 organization ~~corporation~~ shall be liable up to the full value
7 of its property for any negligent acts, wrongful acts, or
8 misconduct committed by any of its officers, agents, or
9 employees while they are engaged on its behalf ~~of the~~
10 ~~corporation~~ in the rendering of professional services.

11 (4) Each certification of authorization shall be
12 renewed every 2 years. Each business organization ~~partnership~~
13 ~~and corporation~~ certified under this section must ~~shall~~ notify
14 the board within 1 month after ~~of~~ any change in the
15 information contained in the application upon which the
16 certification is based.

17 (5) Disciplinary action against a business
18 organization ~~corporation or partnership~~ shall be administered
19 in the same manner and on the same grounds as disciplinary
20 action against a licensed engineer.

21 Section 4. Subsection (3) of section 471.033, Florida
22 Statutes, is amended to read:

23 471.033 Disciplinary proceedings.--

24 (3) When the board finds any person guilty of any of
25 the grounds set forth in subsection (1), it may enter an order
26 imposing one or more of the following penalties:

27 (a) Denial of an application for licensure.

28 (b) Revocation or suspension of a license.

29 (c) Imposition of an administrative fine not to exceed
30 \$5,000 ~~\$1,000~~ for each count or separate offense.

31 (d) Issuance of a reprimand.

1 (e) Placement of the licensee on probation for a
2 period of time and subject to such conditions as the board may
3 specify.

4 (f) Restriction of the authorized scope of practice by
5 the licensee.

6 (g) Restitution.

7 Section 5. Section 471.038, Florida Statutes, is
8 amended to read:

9 471.038 Florida Engineers Management Corporation.--

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

12 (2) The purpose of this section is to create a
13 public-private partnership by providing that a single
14 nonprofit corporation be established to provide
15 administrative, investigative, and prosecutorial services to
16 the board and that no additional nonprofit corporation be
17 created for these purposes.

18 (3) The Florida Engineers Management Corporation is
19 created to provide administrative, investigative, and
20 prosecutorial services to the board in accordance with the
21 provisions of chapter 455 and this chapter. The management
22 corporation may hire staff as necessary to carry out its
23 functions. Such staff are not public employees for the
24 purposes of chapter 110 or chapter 112, except that the board
25 of directors and the staff are subject to the provisions of s.
26 112.061. The provisions of s. 768.28 apply to the management
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 management
30 corporation 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 chapter 455, this chapter, and the contract
6 required by this section.

7 (c) Receive, hold, and administer property and make
8 only prudent expenditures directly related to the
9 responsibilities of the board, and in accordance with the
10 contract required by this section.

11 (d) Be approved by the board, and the department, to
12 operate for the benefit of the board and in the best interest
13 of the state.

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

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

1 (g) Select its officers in accordance with its bylaws.
2 The members of the board of directors who were appointed by
3 the board may be removed by the board, ~~with the concurrence of~~
4 ~~the department, for the same reasons that a board member may~~
5 ~~be removed.~~

6 (h) Select the president of the management
7 corporation, who shall also serve as executive director to the
8 board, subject to approval of the board.

9 *(i)*~~(h)~~ Use a portion of the interest derived from the
10 management corporation account to offset the costs associated
11 with the use of credit cards for payment of fees by applicants
12 or licensees.

13 *(j)*~~(i)~~ Operate under a ~~an annual~~ written contract with
14 the department which is approved by the board. The contract
15 must provide for, but is not limited to:

16 ~~1. Approval of the articles of incorporation and~~
17 ~~bylaws of the management corporation by the department and the~~
18 ~~board.~~

19 ~~1.2.~~ Submission by the management corporation of an
20 annual budget that complies with board rules for approval by
21 the board and the department.

22 ~~2.3.~~ Annual certification by the board and the
23 department that the management corporation is complying with
24 the terms of the contract in a manner consistent with the
25 goals and purposes of the board and in the best interest of
26 the state. This certification must be reported in the board's
27 minutes. The contract must also provide for methods and
28 mechanisms to resolve any situation in which the certification
29 process determines noncompliance.

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

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

7 ~~3.5.~~ Funding of the management corporation through
8 appropriations allocated to the regulation of professional
9 engineers from the Professional Regulation Trust Fund.

10 ~~4.6.~~ The reversion to the board, or the state if the
11 board ceases to exist, of moneys, records, data, and property
12 held in trust by the management corporation for the benefit of
13 the board, if the management corporation is no longer approved
14 to operate for the board or the board ceases to exist. All
15 records and data in a computerized database shall be returned
16 to the department in a form that is compatible with the
17 computerized database of the department.

18 ~~5.7.~~ The securing and maintaining by the management
19 corporation, during the term of the contract and for all acts
20 performed during the term of the contract, of all liability
21 insurance coverages in an amount to be approved by the board
22 ~~department~~ to defend, indemnify, and hold harmless the
23 management corporation and its officers and employees, the
24 department and its employees, and the state against all claims
25 arising from state and federal laws. Such insurance coverage
26 must be with insurers qualified and doing business in the
27 state. The management corporation must provide proof of
28 insurance to the department. The department and its employees
29 and the state are exempt from and are not liable for any sum
30 of money which represents a deductible, which sums shall be
31 the sole responsibility of the management corporation.

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

3 6.8. Payment by the management corporation, out of its
4 allocated budget, to the department of all costs of
5 representation by the board counsel, including salary and
6 benefits, travel, and any other compensation traditionally
7 paid by the department to other board counsels.

8 7.9. Payment by the management corporation, out of its
9 allocated budget, to the department of all costs incurred by
10 the management corporation or the board for the Division of
11 Administrative Hearings of the Department of Management
12 Services and any other cost for utilization of these state
13 services.

14 8.10. Payment by the management corporation, out of
15 its allocated budget, to the department of reasonable all
16 costs associated with the contract monitor administrator of
17 ~~the department, including salary and benefits, travel, and~~
18 ~~other related costs traditionally paid to state employees.~~

19 (k)(j) Provide for an annual financial audit of its
20 financial accounts and records by an independent certified
21 public accountant. The annual audit report shall include a
22 management letter in accordance with s. 11.45 and a detailed
23 supplemental schedule of expenditures for each expenditure
24 category. The annual audit report must be submitted to the
25 board, the department, and the Auditor General for review.

26 (l)(k) Provide for persons not employed by the
27 corporation who are charged with the responsibility of
28 receiving and depositing fee and fine revenues to have a
29 faithful performance bond in such an amount and according to
30 such terms as shall be determined in the contract.

31

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

15 ~~(n)(m)~~ Develop and submit to, ~~with~~ the department,
16 performance standards and measurable outcomes for the board to
17 adopt by rule in order to facilitate efficient and
18 cost-effective regulation.

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

25 (5) Notwithstanding ss. 455.228 and 455.2281, the
26 duties and authority of the department to receive complaints
27 and to investigate and deter the unlicensed practice of
28 engineering are delegated to the board. The board may use
29 funds of the Board of Professional Engineers in the unlicensed
30 activity account established under s. 455.2281 to perform the
31 duties relating to unlicensed activity.

1 (6) The board, with the concurrence of the board
2 chair, may issue emergency suspension or restriction orders
3 pursuant to s. 120.60.

4 ~~(7)(5)~~ The department shall retain the independent
5 authority to open or, investigate, ~~or prosecute~~ any cases or
6 complaints, as necessary to protect the public health, safety,
7 or welfare. In addition, the department may request that the
8 management corporation prosecute such cases ~~shall retain sole~~
9 ~~authority to issue emergency suspension or restriction orders~~
10 ~~pursuant to s. 120.60 and to prosecute unlicensed activity~~
11 ~~cases pursuant to ss. 455.228 and 455.2281.~~

12 ~~(8)(6)~~ Management corporation records are public
13 records subject to the provisions of s. 119.07(1) and s.
14 24(a), Art. I of the State Constitution; however, public
15 records exemptions set forth in ss. 455.217 and 455.229 for
16 records created or maintained by the department shall apply to
17 records created or maintained by the management corporation.
18 In addition, all meetings of the board of directors are open
19 to the public in accordance with s. 286.011 and s. 24(b), Art.
20 I of the State Constitution. The exemptions set forth in s.
21 455.225, relating to complaints and information obtained
22 pursuant to an investigation by the department, shall apply to
23 such records created or obtained by the management corporation
24 only until an investigation ceases to be active. For the
25 purposes of this subsection, an investigation is considered
26 active so long as the management corporation or any law
27 enforcement or administrative agency is proceeding with
28 reasonable dispatch and has a reasonable, good faith belief
29 that it may lead to the filing of administrative, civil, or
30 criminal proceedings. An investigation ceases to be active
31 when the case is dismissed prior to a finding of probable

1 cause and the board has not exercised its option to pursue the
2 case or 10 days after the board makes a determination
3 regarding probable cause. All information, records, and
4 transcriptions regarding a complaint that has been determined
5 to be legally sufficient to state a claim within the
6 jurisdiction of the board become available to the public when
7 the investigation ceases to be active, except information that
8 is otherwise confidential or exempt from s. 119.07(1).

9 However, in response to an inquiry about the licensure status
10 of an individual, the management corporation shall disclose
11 the existence of an active investigation if the nature of the
12 violation under investigation involves the potential for
13 substantial physical or financial harm to the public. The
14 board shall designate by rule those violations that involve
15 the potential for substantial physical or financial harm. The
16 department and the board shall have access to all records of
17 the management corporation, as necessary to exercise their
18 authority to approve and supervise the contract.

19 (9)~~(7)~~ The management corporation is the sole source
20 and depository for the records of the board, including all
21 historical information and records. The management corporation
22 shall maintain those records in accordance with the guidelines
23 of the Department of State and shall not destroy any records
24 prior to the limits imposed by the Department of State.

25 (10)~~(8)~~ The board shall provide by rule for the
26 procedures the management corporation must follow to ensure
27 that all licensure examinations are secure while under the
28 responsibility of the management corporation and that there is
29 an appropriate level of monitoring during the licensure
30 examinations.

31 Section 6. This act shall take effect July 1, 2003.

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SENATE SUMMARY

Revises several provisions relating to the regulation of professional engineers. Revises terminology relating to the engineering licensing examinations and the legal entities that may be involved in engineering. Includes restitution as a penalty for disciplinary violations. Removes certain management powers of the Department of Business and Professional Regulation over the Florida Engineers Management Corporation and deletes a bond requirement. Gives the board additional enforcement powers. Requires a report.