

By the Committee on Regulated Industries; and Senator Clary

315-2168-03

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; providing an effective  
20          date.

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

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24           Section 1. Subsection (1) of section 471.013, Florida  
25 Statutes, is amended to read:

26           471.013 Examinations; prerequisites.--

27           (1)(a) A person shall be entitled to take an  
28 examination for the purpose of determining whether she or he  
29 is qualified to practice in this state as an engineer if the  
30 person is of good moral character and:

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

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

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

21  
22 The board shall adopt rules providing for the review and  
23 approval of schools or colleges and the courses of study in  
24 engineering in such schools and colleges. The rules shall be  
25 based on the educational requirements for engineering as  
26 defined in s. 471.005. The board may adopt rules providing  
27 for the acceptance of the approval and accreditation of  
28 schools and courses of study by a nationally accepted  
29 accreditation organization.

30           (b) A person shall be entitled to take the  
31 fundamentals ~~an~~ examination for the purpose of determining

1 whether she or he is qualified to practice in this state as an  
2 engineer intern if she or he is in the final year of, or is a  
3 graduate of, an approved engineering curriculum in a school,  
4 college, or university approved by the board.

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

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

20 Section 2. Section 471.015, Florida Statutes, is  
21 amended to read:

22 471.015 Licensure.--

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

28 (2) The board shall certify for licensure any  
29 applicant who satisfies the requirements of s. 471.013. The  
30 board may refuse to certify any applicant who has violated any  
31 of the provisions of s. 471.031.

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

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

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

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

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

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

28           2. Has received a doctorate degree in engineering from  
29 an institution that has an undergraduate engineering degree  
30 program which is accredited by the Accreditation Board for  
31 Engineering Technology; or

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

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

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

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

30           Section 3. Section 471.023, Florida Statutes, is  
31 amended to read:

1           471.023 Certification of business organizations  
2 ~~partnerships and corporations.~~--

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

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

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

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

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

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

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

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

21 471.033 Disciplinary proceedings.--

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

25 (a) Denial of an application for licensure.

26 (b) Revocation or suspension of a license.

27 (c) Imposition of an administrative fine not to exceed  
28 \$5,000 ~~\$1,000~~ for each count or separate offense.

29 (d) Issuance of a reprimand.

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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:

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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 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.

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

9           ~~(7)(6)~~ Management corporation records are public  
10 records subject to the provisions of s. 119.07(1) and s.  
11 24(a), Art. I of the State Constitution; however, public  
12 records exemptions set forth in ss. 455.217 and 455.229 for  
13 records created or maintained by the department shall apply to  
14 records created or maintained by the management corporation.  
15 In addition, all meetings of the board of directors are open  
16 to the public in accordance with s. 286.011 and s. 24(b), Art.  
17 I of the State Constitution. The exemptions set forth in s.  
18 455.225, relating to complaints and information obtained  
19 pursuant to an investigation by the department, shall apply to  
20 such records created or obtained by the management corporation  
21 only until an investigation ceases to be active. For the  
22 purposes of this subsection, an investigation is considered  
23 active so long as the management corporation or any law  
24 enforcement or administrative agency is proceeding with  
25 reasonable dispatch and has a reasonable, good faith belief  
26 that it may lead to the filing of administrative, civil, or  
27 criminal proceedings. An investigation ceases to be active  
28 when the case is dismissed prior to a finding of probable  
29 cause and the board has not exercised its option to pursue the  
30 case or 10 days after the board makes a determination  
31 regarding probable cause. All information, records, and

1 transcriptions regarding a complaint that has been determined  
2 to be legally sufficient to state a claim within the  
3 jurisdiction of the board become available to the public when  
4 the investigation ceases to be active, except information that  
5 is otherwise confidential or exempt from s. 119.07(1).  
6 However, in response to an inquiry about the licensure status  
7 of an individual, the management corporation shall disclose  
8 the existence of an active investigation if the nature of the  
9 violation under investigation involves the potential for  
10 substantial physical or financial harm to the public. The  
11 board shall designate by rule those violations that involve  
12 the potential for substantial physical or financial harm. The  
13 department and the board shall have access to all records of  
14 the management corporation, as necessary to exercise their  
15 authority to approve and supervise the contract.

16 (8)~~(7)~~ The management corporation is the sole source  
17 and depository for the records of the board, including all  
18 historical information and records. The management corporation  
19 shall maintain those records in accordance with the guidelines  
20 of the Department of State and shall not destroy any records  
21 prior to the limits imposed by the Department of State.

22 (9)~~(8)~~ The board shall provide by rule for the  
23 procedures the management corporation must follow to ensure  
24 that all licensure examinations are secure while under the  
25 responsibility of the management corporation and that there is  
26 an appropriate level of monitoring during the licensure  
27 examinations.

28 Section 6. This act shall take effect July 1, 2003.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2464

Deletes the board's authority to issue emergency suspension or  
restriction orders.