

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 827 Engineering

SPONSOR(S): Commerce Committee, Business & Professions Subcommittee; and Toledo

TIED BILLS: **IDEN./SIM. BILLS:** SB 616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N	Thompson	Anstead
2) Commerce Committee	22 Y, 0 N, As CS	Thompson	Hamon

SUMMARY ANALYSIS

Chapter 471, F.S., governs the licensing and regulation of professional engineers. The practice of engineering is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions. The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC). Currently, there are over 44,000 active licensed engineers in the state of Florida.

The bill makes the following changes to ch. 471, F.S.:

- Removes the requirement that engineers obtain a separate engineering business license (certificate of authorization) for their engineering firm;
- Allows a licensed engineer to qualify an engineering business and provides requirements for such;
- Adds an additional pathway for someone to become licensed as an engineer with an engineering technology degree;
- Allows Boards that regulate professions under ch. 455, F.S., to accept applications from applicants with voided licenses without completely repeating the initial application process;
- Requires applicants for licensure to submit proof of being 18 years of age or older;
- Allows the Board to toll the timeframe that an application must be granted or denied in certain circumstances instead of requiring automatic denial;
- Requires a temporary registration instead of a temporary certificate of authorization for out-of-state engineering businesses;
- Requires successor engineers to assume full responsibility when assuming the work of another engineer; and releases an original engineer from liability for prior work assumed by the successor engineer;
- Prohibits a Department of Transportation district or Florida Turnpike Enterprise from contracting for construction engineering inspections with the same entities that perform design services on the same project;
- Clarifies the types of projects that require a special inspection; and
- Revises provisions related to alternate plans review by private providers.

The bill does not appear to have a fiscal impact on state or local government.

The effective date of the bill is October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Licensed Professional Engineers

Chapter 471, F.S., governs the licensing and regulation of professional engineers. The practice of engineering is regulated by the Florida Board of Professional Engineers (Board) under The Department of Business and Professional Regulation (DBPR) Division of Professions.¹ The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC).² FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

Currently, there are over 44,000 active licensed engineers in the state of Florida.³

Delinquent Status Licenses

Background

Section 455.271, F.S., requires that professionals who are licensed maintain an active status license in order to practice a profession regulated by DBPR. Failure to renew a license results in the license becoming delinquent. A delinquent status licensee must affirmatively apply with a complete application for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure to become active or inactive before the expiration of the current licensure cycle renders the license void. Currently, applicants with a previously voided license must start the application process over by completing an initial application, and must obtain a new license number.

Section 471.019, F.S., requires the Board to prescribe by rule continuing education requirements for reactivating a license to practice professional engineering. The continuing education requirements for reactivating a license must not exceed 12 classroom hours for each year the license was inactive.

Proposed Changes

The bill amends s. 455.271, F.S., removing the requirement that a delinquent licensee must apply with a complete application for active or inactive status, and instead, requires the Board to develop rules allowing a voided licensee to apply for reinstatement.

The bill amends s. 471.019, F.S., requiring the Board to establish by rule a reinstatement process for void licenses, and prohibits the continuing education requirements for reactivation from exceeding the current continuing education requirements for licensed professional engineers, which in part, requires only nine hours for each year of the renewal period and a maximum 18 hours per license renewal period.

¹ S. 20.165(4)(a)11., F.S.

² S. 471.038(3), F.S.

³ Florida Board of Professional Engineers, *About Florida Board of Professional Engineers*, <https://fbpe.org/about/about-fbpe/> (last visited Feb. 27, 2019).

Certificates of Authorization

Background

Section 471.005, F.S., defines “certificate of authorization” as a license to practice engineering issued by the management corporation to a corporation or partnership.

Section 471.023, F.S., requires business organizations that offer engineering services in Florida to obtain a certificate of authorization. The certification is issued by FEMC pursuant to qualification by the Board. The law requires at least one principal officer or partner, and all personnel who act on its behalf as engineers, of the business to be licensed professional engineers.

Section 471.011, F.S., provides that the fee for a certificate of authorization may not exceed \$125.

The Board requires applicants for an engineering business certificate of authorization to pay the following fees:

- initial certificate of authorization, which includes:
 - an application fee of \$125;
 - an initial fee of \$100, and
 - an unlicensed activities fee of \$5.
- renewal of a certificate of authorization, which includes:
 - a renewal fee of \$93.75;
 - an unlicensed activities fee of \$5; and
 - a delinquent fee of \$25, if the certificate is delinquent.⁴

Proposed Changes

The bill removes the requirement that engineers obtain a separate business license (certificate of authorization) in addition to an individual license, but continues to allow engineering firms to operate in the state. The bill requires a licensed engineer to be responsible for the firm and to qualify their business organizations with their individual licenses. The qualifying engineer must ensure responsible supervising control of all projects of the business organization. The bill also amends s. 471.011, F.S., prohibiting the Board from charging a fee for qualifying a business organization.

The bill sets forth the following requirements for qualifying agents (Agents) of a qualified business organization:

- An Agent who terminates an affiliation with a qualified business organization must notify FEMC within 24 hours.
- If such Agent is the only Agent for the business organization, the business must be qualified by another Agent within 60 days after termination, and may not engage in the practice of engineering until it is qualified by another Agent.
- If an Agent ceases employment and is the only licensee affiliated with the business organization, the executive director of FEMC or the chair of the Board may authorize another licensee employed by the business organization to temporarily serve as its Agent up to 60 days for work related to incomplete contracts. The business organization is not authorized to operate beyond the 60 days without replacing its Agent.
- An Agent is required to provide written notification to DBPR before practicing engineering in the licensee's name or in affiliation with a different business organization.

⁴ R. 61G15-24.001, F.A.C.
STORAGE NAME: h0827c.COM
DATE: 4/11/2019

Temporary Certificates

Background

Section 471.021, F.S., sets forth a process for temporary certificates for out-of-state entities to practice in Florida. The temporary certificate is available to out-of-state engineers who are qualified by licensure by endorsement, and are meant for work on one project for a period of one year. An out-of-state business organization that meets the requirements of s. 471.023, F.S., and upon payment of the required fee, is authorized to be issued a temporary certificate of authorization.

Proposed Changes

The bill changes the temporary certificate to a temporary registration.

Examination Prerequisites

Background

Section 471.013, F.S., requires an applicant for licensure as a professional engineer to successfully pass two examinations, the fundamentals examination and the principles and practice examination, prior to obtaining licensure.⁵

Prior to being permitted to sit for the fundamentals examination, an applicant is required to have achieved one of the following requirements:

- graduated from an approved engineering curriculum of four years or more in a Board approved school, college, or university, and have four years of active engineering experience indicating competence to be in responsible charge;
- graduated from an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, and have four years of active engineering experience indicating competence to be in responsible charge;
 - This applies only to those who enrolled or graduated prior to July 1, 1979; or
- in lieu of such education and experience requirements, have 10 years or more of active engineering experience indicating competence to be in responsible charge;
 - This applies only to those who notify DBPR before July 1, 1984, that she or he was engaged in such work on July 1, 1981.⁶

There is currently only one way for an applicant to become licensed as an engineer because both the option that includes a technology degree and the option that includes active engineering experience are based upon outdated requirements.

Proposed Changes

The bill removes the requirement that graduates have active responsible engineering work experience before sitting for the fundamentals examination.

The bill removes the date limitation from the provision allowing an engineering technology degree to be used to qualify for licensure, which only applied to those who enrolled or graduated prior to July 1, 1979. Thus, applicants can use a technology degree as a prerequisite to licensure.

The bill removes the outdated option authorizing 10 years of work experience in lieu of the education and experience requirements, which only applies to those who were engaged in such work on July 1, 1981.

⁵ S. 471.013, F.S.

⁶ S. 471.013(1)(a), F.S.

The bill also revises the “engineering curriculum” education requirement to instead require an “engineering science curriculum.”

Licensure Prerequisites

Background

Section 471.015(2), F.S., requires the Board to certify for licensure any applicant who satisfies the examination requirements in s. 471.013, F.S. In addition, the Board is authorized to refuse to certify any applicant who has violated the professional engineer prohibitions provided in s. 471.031, F.S.

This section does not currently prescribe work experience requirements for applicants for licensure. Work experience requirements are provided in s. 471.013, Examination Prerequisites, explained above.

Proposed Changes

The bill revises this section to require applicants for licensure to submit satisfactory proof to the Board that he or she is at least 18 years of age, and to have active responsible engineering experience. Specifically, graduates from an approved engineering science curriculum must have four years of active responsible engineering experience, and graduates from an approved engineering technology curriculum must have six years of such experience.

Personal Appearances

Background

Section 471.015(6), F.S., authorizes the Board to require a personal appearance of an applicant for licensure under this chapter. The Board must provide applicants with adequate notice of the time and place of the appearance, and a statement of the purpose and reasons requiring the appearance.

Proposed Changes

The bill allows the application of an applicant who fails to appear before the Board twice to be denied. The bill specifies such applications may be denied by the board, and if the applicant is required to appear, the time period within which a licensure application must be granted or denied is tolled until such time as the applicant appears.

Special Inspector Structural Inspections

Background

Section 553.79(5)(a), F.S., specifies that local governments must require special inspectors to perform structural inspections on threshold buildings pursuant to a structural inspection plan. Currently, this statute does not define structural terms or specify the types of structural projects that must be inspected. As a result, it appears that a special inspector could be required to perform an inspection for nonstructural projects.

Proposed Changes

The bill amends s. 553.79, F.S., clarifying the types of structural projects on which special inspectors may be required to perform an inspection. These include projects that modify the structural system or structural loading of a building as follows:

- new construction projects;
- repair projects; or

- restoration projects.

Successor Engineers

Background

Section 471.025, F.S., requires the Board to prescribe by rule, seal requirements for professional engineers.⁷ The statute specifies that all final engineering documents must bear the engineer's signature, date, and seal at a minimum, which serves as evidence of the authenticity of the documents.

The statute does not specifically address instances when a professional engineer succeeds and adopts the final engineering documents of a previous engineer. As a result, it may be unclear who is fully responsible for such work. For example, the Fifth District Court of Appeal recently reversed a summary judgment in favor of an engineering company in a negligent road construction case. In its judgement, the court rejected an argument that the original engineering firm may avoid liability for negligent design plans based solely on the signing and sealing of a subsequent set of design plans by a successor professional engineer.⁸

Proposed Changes

The bill amends s. 471.025, F.S., requiring successor engineers to assume full responsibility when signing or affixing his or her seal to documents previously sealed by another engineer. Specifically, the bill requires a successor engineer seeking to reuse such documents to:

- be able to independently recreate all of the work done by the original engineer;
- assume full professional and legal responsibility by signing and affixing his or her seal to the assumed documents; and
- treat the documents as though they were the successor engineer's original product.

The bill releases the original engineer from any professional responsibility or civil liability for prior work assumed by the successor engineer.

For the purposes of this subsection, the term "successor engineer" means an engineer who is using or relying upon the work, findings, or recommendations of the engineer who previously sealed the pertinent documents.

Alternate Plans Review/Private Providers

Background

Traditionally, construction plans review and construction work inspections are done by government personnel, usually city or county building department personnel. Certain types of construction (such as restaurants, hospitals, and more) are subject to state and/or federal requirements. Florida allows the use of "private providers" for some plans review and inspection services, subject to a number of requirements or restrictions.⁹

Section 553.791, F.S., sets forth the requirements for the use of private providers. A private provider is a licensed engineer or architect who may be hired to perform building code inspection services by a property owner or contractor. Private providers are able to provide building plans, perform building code inspections within the scope of the provider's license, and prepare certificates of compliance. Private

⁷ R. 61G15- 23.001(1), F.A.C.

⁸ *Cherry C. Villanueva, as Personal Representative v. Reynolds, Smith and Hills, Inc., et al.*, 159 So. 3d 200 (Fla. 5th DCA 2015).

⁹ University of Florida, *Alternative Plans Review and Inspections*,

http://www.floridabuilding.org/FBC/publications/Fact_Sheets_0307/AlternativePlansIndustry060305revised.pdf (last visited Mar. 15, 2019).

providers also include building officials, inspectors, and plans examiners. However, they are limited to inspecting alterations or additions that are a 1,000 square feet or less in a residential building.¹⁰

In order to use a private provider, a property owner or the owner's contractor is required to notify the local building official when applying for a building permit, or no less than seven business days prior to the first scheduled inspection by the local building official or agency.¹¹

After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the owner or the owner's contractor is authorized to use a private provider. The notification must be to the local building official no less than seven business days prior to the next scheduled inspection.¹²

The local building official is required to act on the requested permit within 30 days of receipt of the permit application and required affidavit. The permit must be issued or a written notice must be provided to the applicant identifying plan deficiencies. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit must be approved and issued by the local building official on the next business day. If the local building official provides written notice of plan deficiencies within the 30-day period, the 30-day period is tolled (postponed) pending resolution of the matter. If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus five business days to issue the requested permit or to provide a second written notice stating which plan features remain noncompliant.

Proposed Changes

The bill amends s. 553.791, F.S., reducing the timeframes that property owners or their contractors have to notify local building officials of the use of private inspection providers, from seven business days prior to the first local official's or agency's scheduled inspection, to instead 2 p.m. local time, two business days before the first scheduled local inspection.

The bill reduces the 30-day period to 20-days within which a local building official must act on a permit application, which includes plans reviewed by a private provider, makes conforming changes, and authorizes private providers to perform their work outside of the local building official's normal operating hours including after hours, weekends, or holidays.

Construction Engineering Inspections

Background

The Florida Department of Transportation (DOT) has general authority to enter into contracts and agreements with private contractors under s. 334.044, F.S.

Current law prohibits a DOT "contractor" or his or her "affiliate" from being qualified to bid on construction projects and testing, construction, engineering, and inspection (CEI) services. This limitation does not apply:

- when DOT determines that it is in the best interest of the public with respect to design-build projects for a building, major bridge, limited access facility, or rail corridor under s. 337.11(7), F.S.; or
- when DOT otherwise determines it is not in the best interest of the public with respect to a particular contract for testing services, and CEI services.¹³

¹⁰ S. 553.791(1)(i), F.S.

¹¹ S. 553.791(4), F.S.

¹² S. 553.791(5), F.S.

¹³ S. 337.14(7), F.S.

Contractors representing DOT must be free of conflicting professional or personal interests. Such competing interests could hinder objective decision making, and potentially make it difficult for consultant firms to discharge their contractual obligations impartially.¹⁴ In order to prevent potential conflicts, DOT has established procedures to be followed when contracting for professional services, including consultant CEI contracts. For example, a geotechnical consultant who provides geotechnical design services is not allowed to later provide related CEI services on the same project.¹⁵

Proposed Changes

The bill codifies longstanding DOT procedure regarding conflicts of interest for department contracts. Notwithstanding any other provision of law to the contrary, the bill amends s. 334.044, F.S., specifying that a DOT district or the Florida Turnpike Enterprise may not contract with an entity for the performance of both design services and CEI for the same project.

B. SECTION DIRECTORY:

- Section 1 Amends s. 334.044, F.S., relating to construction, engineering, and inspection services.
- Section 2 Amends s. 455.271, F.S., relating to inactive and delinquent status licenses.
- Section 3 Amends s. 471.005, F.S., relating to definitions.
- Section 4 Amends s. 471.011, F.S., relating to fees.
- Section 5 Amends s. 471.013, F.S., relating to examination prerequisites.
- Section 6 Amends s. 471.015, F.S., relating to licensure prerequisites.
- Section 7 Amends s. 471.019, F.S., relating to delinquent license reactivation.
- Section 8 Amends s. 471.021, F.S., relating to temporary certificates to practice in Florida.
- Section 9 Amends s. 471.023, F.S., relating to certification of business authorizations.
- Section 10 Amends s. 471.025, F.S., relating to the use of successor engineer seals.
- Section 11 Amends s. 553.79, F.S., relating to special inspections of threshold buildings.
- Section 12 Amends s. 553.791, F.S., relating to alternate plans review and inspection notices to local building officials.
- Section 13 Provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁴ Florida Department of Transportation, Conflict of Interest – Frequently Asked Questions, <https://www.fdot.gov/construction/conflictinterest/coi-main.shtm> (last visited Apr. 11, 2019).

¹⁵ Florida Department of Transportation, Conflict of Interest Procedure for Department Contracts, <file:///C:/Users/Thompson.Jason/Downloads/375-030-006.pdf> (last visited Apr. 11, 2019).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes in the bill may make it easier for people applying for licensure and lower costs for engineering licensees and businesses. Specifically, engineering businesses will no longer be required to pay the following fees for:

- initial certificate of authorization, which includes:
 - an application fee of \$125;
 - an initial fee of \$100, and
 - an unlicensed activities fee of \$5.
- renewal of a certificate of authorization, which includes:
 - a renewal fee of \$93.75;
 - an unlicensed activities fee of \$5; and
 - a delinquent fee of \$25, if the certificate is delinquent.¹⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Business & Professions Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute made the following revisions to the bill:

¹⁶ R. 61G15-24.001, F.A.C.
STORAGE NAME: h0827c.COM
DATE: 4/11/2019

- Removed rulemaking authority for the Board to establish minimum standards of practice and responsibility rules for the profession of engineering;
- Removed the requirement that the authorized representative of a special inspector complete continuing education requirements;
- Added rulemaking authority for the Board of Professional Engineers to allow void licensees to reapply for licensure without completely repeating the application process;
- Revised the provision relating to the denial of an applicant who fails to appear before the Board twice;
- Added provisions eliminating the additional license and fees for engineering businesses;
- Revised provisions related to alternate plans review by private providers; and
- Added a provision prohibiting the Department of Transportation or Florida Turnpike Enterprise from contracting for construction engineering inspections with the same entities that perform design services.

On April 10, 2019, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Increased the timeframe provided in the bill that property owners or their contractors have to notify local building officials of the use of private inspection providers from one business day to two business days before scheduled inspections.
- Increased the 15-day period provided in the bill to 20 days within which a local building official must act on a permit application that includes plans reviewed by a private provider.

The staff analysis is drafted to the committee substitute as passed by the Commerce Committee.