

## CHAPTER 97-312

### Committee Substitute for House Bill No. 433

An act relating to the Board of Professional Engineers; amending s. 471.011, F.S.; revising fees; creating s. 471.038, F.S.; providing legislative findings and intent; providing definitions; creating the Florida Engineers Management Corporation; providing for the organization, powers, and duties of the corporation; providing an appropriation; providing for review and repeal of s. 471.038; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 471.011, Florida Statutes, are amended to read:

471.011 Fees.—

(3) The initial license fee shall not exceed \$125 ~~\$200~~.

(5) The biennial renewal fee shall not exceed \$125 ~~\$150~~.

Section 2. Section 471.038, Florida Statutes, is created to read:

471.038 Florida Engineers Management Corporation.—

(1) This section may be cited as the “Florida Engineers Management Corporation Act.”

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

(a) “Board” means the Board of Professional Engineers.

(b) “Board of Directors” means the board of directors of the Florida Engineers Management Corporation.

(c) “Corporation” means the Florida Engineers Management Corporation.

(d) “Department” means the Department of Business and Professional Regulation.

(e) “Secretary” means the Secretary of Business and Professional Regulation.

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

(b) It is the intent of the Legislature that a single nonprofit corporation be established to provide administrative, investigative, and prosecutorial

services to the board and that no additional nonprofit corporation be created for these purposes.

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

(4) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapters 455 and 471. The corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112. The provisions of s. 768.28 apply to the corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The corporation shall:

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

(b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapters 455 and 471.

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

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

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

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

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

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

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

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

4. Employment by the department of a contract administrator to actively supervise the administrative, investigative, and prosecutorial activities of the corporation to ensure compliance with the contract and the provisions of chapters 455 and 471 and to act as a liaison for the department, the board, and the corporation to ensure the effective operation of the corporation.

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

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

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

(h) Provide for an annual financial and compliance audit of its financial accounts and records by an independent certified public accountant in conjunction with the Auditor General. The annual audit report must be submitted to the board and the department for review and approval. Copies of the audit must be submitted to the secretary and the Legislature together with any other information requested by the secretary, the board, or the Legislature.

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

(5) The corporation may not exercise any authority specifically assigned to the board under chapter 455 or chapter 471, including determining probable cause to pursue disciplinary action against a licensee, taking final action

on license applications or in disciplinary cases, or adopting administrative rules under chapter 120.

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

(7) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217 and 455.229 for records created or maintained by the department shall apply to records created or maintained by the corporation. The exemptions set forth in s. 455.225, relating to complaints and information obtained pursuant to an investigation by the department, shall apply to such records created or obtained by the corporation only until an investigation ceases to be active. For the purposes of this subsection, an investigation is considered active so long as the corporation or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable, good-faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation ceases to be active when the case is dismissed prior to a finding of probable cause and the board has not exercised its option to pursue the case or 10 days after the board makes a determination regarding probable cause. All information, records, and transcriptions regarding a complaint that has been determined to be legally sufficient to state a claim within the jurisdiction of the board become available to the public when the investigation ceases to be active, except information that is otherwise confidential or exempt from s. 119.07(1). However, in response to an inquiry about the licensure status of an individual, the corporation shall disclose the existence of an active investigation if the nature of the violation under investigation involves the potential for substantial physical or financial harm to the public. The board shall designate by rule those violations that involve the potential for substantial physical or financial harm. The department and the board shall have access to all records of the corporation, as necessary to exercise their authority to approve and supervise the contract.

(8) The Office of Program Policy Analysis and Governmental Accountability within the Office of the Auditor General shall conduct a performance audit of the corporation for the period beginning January 1, 1998, through January 1, 2000, and thereafter at the request of the Joint Legislative Auditing Committee.

Section 3. If any provision of section 471.038, Florida Statutes, is held to be unconstitutional or is held to violate the state or federal anti-trust laws, the following shall occur:

(1) The corporation shall cease and desist from exercising any powers and duties enumerated in the act.

(2) The Department of Business and Professional Regulation shall resume the performance of such activities. The department shall regain and

receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(3) The Executive Office of the Governor, notwithstanding chapter 216, Florida Statutes, is authorized to reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the regulation of professional engineers.

Section 4. In addition to moneys appropriated for the operation of the State Board of Professional Engineers, the sum of \$646,000 is appropriated from the account of the State Board of Professional Engineers in the Professional Regulation Trust Fund to the Department of Business and Professional Regulation, of which \$586,000 shall be released to the Florida Engineers Management Corporation as needed for start-up costs and \$60,000 shall be used to fund one O.P.S. position to assist with preparing the contract required by section 471.038, Florida Statutes.

Section 5. This act shall take effect July 1, 1997, but section 471.038, Florida Statutes, shall stand repealed on October 1, 2000. The Legislature shall review the effect of this act in the regular session immediately prior to the repeal date.

Became a law without the Governor's approval June 14, 1997.

Filed in Office Secretary of State June 13, 1997.