

Committee Substitute for
Committee Substitute for Senate Bill No. 2464

An act relating to engineering; amending s. 471.013, F.S.; revising examination requirements; amending s. 471.015, F.S.; conforming provisions; amending s. 471.023, F.S.; revising terminology relating to legal entities involved in offering engineering services; amending s. 471.033, F.S.; providing for the imposition of restitution as a penalty for disciplinary violations; amending s. 471.038, F.S.; deleting obsolete language; deleting certain management powers and duties of the Department of Business and Professional Regulation over the Florida Engineers Management Corporation; deleting a bond requirement for certain employees of the corporation; revising the date an annual report is due; transferring certain functions of the department to the board; providing an effective date.

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

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

471.013 Examinations; prerequisites.—

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

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

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

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

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules shall be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for

the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

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

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

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

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

471.015 Licensure.—

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

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

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

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

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

(4) The management corporation shall not issue a license by endorsement to any applicant who is under investigation in another state for any

act that would constitute a violation of this chapter or of chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

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

1. Has held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience;
2. Has received a doctorate degree in engineering from an institution that has an undergraduate engineering degree program which is accredited by the Accreditation Board for Engineering Technology; or
3. Has received a doctorate degree in engineering and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree.

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

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

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

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

471.023 Certification of business organizations ~~partnerships and corporations~~.—

(1) The practice of, or the offer to practice, engineering by licensees ~~through a corporation or partnership~~ offering engineering services to the public through a business organization, including a partnership, corporation, business trust, or other legal entity or by a business organization,

including a corporation, or partnership, business trust, or other legal entity offering such said services to the public through licensees under this chapter as agents, employees, officers, or partners is permitted only if the business organization firm possesses a certification issued by the management corporation pursuant to qualification by the board, subject to the provisions of this chapter. One or more of the principal officers of the business organization corporation or one or more partners of the partnership and all personnel of the business organization corporation or partnership who act in its behalf as engineers in this state shall be licensed as provided by this chapter. All final drawings, specifications, plans, reports, or documents involving practices licensed under this chapter which are prepared or approved for the use of the business organization corporation or partnership or for public record within the state shall be dated and shall bear the signature and seal of the licensee who prepared or approved them. Nothing in this section shall be construed to mean that a license to practice engineering shall be held by a business organization corporation. Nothing herein prohibits business organizations corporations and partnerships from joining together to offer engineering services to the public, if provided each business organization corporation or partnership otherwise meets the requirements of this section. No business organization corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing engineering be relieved of responsibility for professional services performed by reason of his or her employment or relationship with a business organization corporation or partnership.

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

(3) The fact that a licensed engineer practices through a business organization does corporation or partnership shall not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her. Partnerships and all partners shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a business organization other than a partnership corporation shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization corporation. The personal liability of a shareholder or owner of a business organization corporation, in his or her capacity as shareholder or owner, shall be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The business organization corporation shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf of the corporation in the rendering of professional services.

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

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

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

471.033 Disciplinary proceedings.—

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

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$5,000 ~~\$1,000~~ for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
- (f) Restriction of the authorized scope of practice by the licensee.
- (g) Restitution.

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

471.038 Florida Engineers Management Corporation.—

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

(2) The purpose of this section is to create a public-private partnership by providing 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.

(3) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455 and this chapter. The management 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, except that the board of directors and the staff are subject to the provisions of s. 112.061. The provisions of s. 768.28 apply to the management corpora-

tion, 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 management 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 chapter 455, this chapter, and the contract required by this section.

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

(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 laypersons not regulated by the board. ~~All initial appointments shall expire on October 31, 2000. Current members may be appointed to one additional term that complies with the provisions of this paragraph. Two members shall be appointed for 2 years, three members shall be appointed for 3 years, and two members shall be appointed for 4 years. One layperson shall be appointed to a 3-year term and one layperson shall be appointed to a 4-year term. Thereafter, all appointments shall be for 4-year terms. No new member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board, and the vacancy shall be filled by a new appointment.~~

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

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

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

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

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

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

2.3. Annual certification by the board and the department that the management 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. The contract must also provide for methods and mechanisms to resolve any situation in which the certification process determines noncompliance.

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

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

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

5.7. The securing and maintaining by the management 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 ~~board~~ department to defend, indemnify, and hold harmless the management 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 management 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 management corporation. Violation of this subparagraph shall be grounds for terminating the contract.

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

7.9. Payment by the management corporation, out of its allocated budget, to the department of all costs incurred by the management corporation or the board for the Division of Administrative Hearings of the Department of

Management Services and any other cost for utilization of these state services.

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

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

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

(m)(4) Submit to the secretary, the board, and the Legislature, on or before ~~October~~ 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.

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

(4) The management corporation may not exercise any authority specifically assigned to the board under chapter 455 or this chapter, 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.

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

(6)(5) The department shall retain the independent authority to open or, investigate, ~~or prosecute~~ any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department may request

that the management corporation prosecute such cases and 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)~~(6) Management 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 management corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. 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 management corporation only until an investigation ceases to be active. For the purposes of this subsection, an investigation is considered active so long as the management 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 management 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 management corporation, as necessary to exercise their authority to approve and supervise the contract.

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

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

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

Approved by the Governor July 16, 2003.

Filed in Office Secretary of State July 16, 2003.