

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1049 w/CS Engineering

**SPONSOR(S):** Stargel

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2464 CS

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, &amp; Reg. Business (Sub)</u>	<u>7 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>33 Y, 0 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>Commerce &amp; Local Affairs Apps. (Sub)</u>	<u>11 Y, 0 N</u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Appropriations</u>	<u></u>	<u>Rayman</u>	<u>Hansen</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Engineers are licensed and regulated by the Board of Professional Engineers (BPE), under the Department of Business and Professional Regulation (DBPR), pursuant to chapter 471, F.S. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass two examinations. The "Management Privatization Act" establishes a privatization model for administrative functions of boards under the DBPR. Presently, privatized staff services under the DBPR have been established for the BPE. Additionally, privatization initiatives have been authorized for the Board of Architecture and Interior Design.

The bill clarifies that there are two examinations, rather than two examination parts which applicants for licensure must pass. The bill expands the licensure process by allowing business organizations other than partnerships or corporations to become certified in order to provide engineering services. The bill increases the caps on administrative fines from \$1,000 to \$5,000 and allows restitution as a penalty.

This bill removes certain specified responsibilities from the DBPR and delegates these functions to the BPE. The responsibilities include matters relating to the approval of liability insurance coverage to be carried by the Florida Engineers Management Corporation FEMC; the removal of members of the FEMC board of directors; and the issuance of emergency suspension or restriction orders.

The bill specifies that the FEMC is authorized to select the president of the FEMC and, further, specifies that the president serve as the executive director of the BPE, with the approval of the BPE. The bill deletes the requirement that the FEMC operate under an annual contract with the DBPR, as approved by the BPE, and, therefore, allows a contract to be in effect for longer than a year at a time.

The bill specifies that the BPE may use funds in the unlicensed activity account to carry out the duties of the BPE to combat and prosecute unlicensed activity in the engineering profession.

The bill is not anticipated to have a significant fiscal impact on state or local government. Funding for the operations of certain functions should reflect a shift of appropriations from the DBPR to the BPE.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1049e.ap.doc

**DATE:** April 18, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                                        |                                         |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

1. Reduce Government - The functions authorized to be performed by the BPE could be anticipated to be similar to requirements that have been carried out by the DBPR. The result appears to be a shift of costs and responsibilities, not necessarily the creation of a new program for purposes of savings or increased expenditures.
2. Lower Taxes – The bill increases the amount of administrative fines from \$1,000 to \$5,000.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The DBPR was established in 1993 (chapter 93-220, Laws of Florida) with the merger of the Department of Business Regulation and the Department of Professional Regulation. The mission of the DBPR is to protect the health, safety, and welfare of Florida’s consumers by ensuring that regulated businesses and professions meet prescribed standards. The DBPR enforces compliance with numerous filing and disclosure requirements and various standards and regulations.

Engineers are licensed and regulated by the BPE, under the DBPR, pursuant to chapter 471, F.S. Engineers perform consultation, planning, and design of engineering systems. Chapter 471, F.S., provides for testing, licensure, and discipline of engineers. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass two examinations.

Currently, s. 455.32, F.S., is cited as the “Management Privatization Act.” This section establishes a privatization model for administrative functions of boards under the DBPR. The DBPR is allowed, upon request from a specific board, to contract out staff support services for that board. It provides that a contract providing for privatization of services must be approved by the specific board. This section statutorily specifies provisions relating to the contents of the contract for services.

Privatized services under the DBPR have been established for the BPE. Section 471.038, F.S., created the Florida Engineers Management Corporation (FEMC) in 1997 as a private not-for-profit corporation providing staff support services for that single board. Though revised over the years, the operation of FEMC, as the entity providing specified services to the BPE, continues under this authority. The FEMC operates under an annual written contract with the DBPR.

A performance review of FEMC conducted by the Office of Program Policy Analysis and Government Accountability, and issued in March of 2000, concluded that performance had improved under FEMC, with FEMC handling more cases, and disposing of a higher percentage of them in a more timely fashion than had DBPR. On the other hand, the review found that the

administrative costs for regulating the engineers' profession had increased 16% (or \$247,467) above the regulatory costs from the previous renewal year under DBPR.

Chapter 2002-274, Laws of Florida, (CS/HB 1301) adopted a privatization program for the Board of Architecture and Interior Design pursuant to s. 481.205(3), F.S. The act removed specified responsibilities from the DBPR and delegated these functions to the Board of Architecture and Interior Design. The responsibilities include matters relating to receiving complaints, investigations, discipline, prosecution, and unlicensed activity of architects and interior designers.

The act requires the Board of Architecture and Interior Design rather than the DBPR to contract with a corporation or other business entity to provide specified services. Services must comply with the scope of the contract as required under the "Management Privatization Act." The entity contracting to provide these services must report to the Board of Architecture and Interior Design rather than the DBPR. The act specifies that the Board of Architecture and Interior Design may use funds in the unlicensed activity account for certain activities and requires the Board of Architecture and Interior Design to submit a budget separate from the DBPR budget.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to ss. 455.228 and 455.2281, F.S. Programs of DBPR are funded by fees paid by regulated professionals. Revenues collected from fees and fines are deposited into the Professional Regulation Trust Fund and are earmarked for funding specific programs as appropriated by the Legislature. Funding for unlicensed activity is generated from a \$5.00 special fee pursuant to s. 455.2281, F.S., imposed on initial licenses and the renewal of licenses.

#### Effect of Proposed Changes

The bill addresses several provisions of chapter 471, F.S., relating to the regulation and operations of the DBPR, BPE, and professional engineers.

The bill specifies that there are two examinations, the fundamentals examination and principles and practice examination, rather than two parts to the examination. The bill expands the certification process by allowing business organizations other than partnerships or corporations to become certified in order to provide engineering services.

The bill increases the caps on administrative fines from \$1,000 to \$5,000 and it allows restitution as a penalty.

The bill removes certain responsibilities from the DBPR and delegates these functions to the BPE. The responsibilities include matters relating to the approval of liability insurance coverage to be carried by the FEMC; the removal of members of the FEMC board of directors; and the issuance of emergency suspension or restriction orders.

The bill specifies that the FEMC is authorized to select the president of the FEMC and, further, specifies that the president serve as the executive director of the BPE, with the approval of the BPE. The bill deletes the requirement that the FEMC operate under an annual contract with the DBPR, as approved by the BPE, and, therefore, allows a contract to be in effect for longer than a year at a time.

The bill specifies that the BPE may use funds in the unlicensed activity account pursuant to s. 455.2281, F.S., to carry out the duties of the BPE to combat and prosecute unlicensed activity in the engineering profession.

C. SECTION DIRECTORY:

Section 1. Amends s. 471.013, F.S., to divide the engineer examination into two separate examinations to cover "fundamentals" and "principles and practice."

Section 2. Amends s. 471.015, F.S., to correct reference to the two examinations.

Section 3. Amends S. 471.023, F.S., to authorize the creation of business organizations to provide engineering services.

Section 4. Amends s. 471.033, F.S., to increase the cap on administrative fines from \$1,000 to \$5,000.

Section 5. Amends s. 471.038, F.S., to allow additional oversight of the FEMC by the BPE.

Section 6. Effective date - October 1, 2003.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See comments section below.

2. Expenditures:

See comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See comments section below.

D. FISCAL COMMENTS:

The functions authorized to be performed by the BPE could be anticipated to be similar to requirements that have been carried out by the DBPR. The result appears to be a shift of costs and responsibilities, not necessarily the creation of a new program for purposes of savings or increased expenditures.

The bill does not appear to have an appropriations impact relating to unlicensed activity, though there is the possibility of funds being transferred between the operating account and the unlicensed activity account of the BPE.

The bill increases the cap on administrative fines from \$1,000 to \$5,000.

The DBPR notes that currently the Secretary of the DBPR appoints a DBPR employee to serve as Executive Director of the BPE. This is not a full time position but is an additional duty of another

position within the DBPR. The bill allows the president of the FEMC to serve as Executive Director of the BPE. This will reduce travel costs incurred by DBPR staff approximately \$3,000 annually from the Professional Regulatory Trust Fund.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

##### 2. Other:

None noted.

#### B. RULE-MAKING AUTHORITY:

NA

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

There are several types of privatization programs being used today. According to *The Revolution in Privatization* by Lawrence W. Reed, printed in the Journal of the James Madison Institute, Summer 2001, pp. 20-24, 32. The most common form of privatization is known as "out-sourcing" or "contracting out." The interim report by the staff of the House Committee on Health Regulation titled *Feasibility of Privatizing Certain Health Regulation Functions*, October 2001, p. 33, states "this form of privatization is already being used in health practitioner regulation with regard to licensure renewal, certain national examinations, and standardized credentialing." The report further states, "...certain cases have been contracted out to private attorneys for prosecution if the Agency was unable or unwilling to prosecute."

In *Assessing Privatization in State Agency Programs*, Report No. 98-64, published by the Florida Legislative Office of Program Policy Analysis and Government Accountability (OPPAGA), February 1999, there is a list and explanation of potential advantages and disadvantages identified by OPPAGA that relate to the privatization of public services.

The advantages of privatization noted in the OPPAGA report include cost savings (labor costs, reduced regulatory requirements, reduced overhead, more personnel flexibility, better equipment, and faster reactions to changing conditions), staffing flexibility and obtaining needed expertise, political factors, and a shift in start-up costs to the private sector.

The disadvantages of privatization noted in the OPPAGA report include reduced public accountability, service quality problems, higher long-term costs, and workforce issues.

In addition, the OPPAGA report recommends that when considering privatization, the Legislature should consider whether it is appropriate to privatize the service and whether there is reason to believe that privatization will save money or improve services.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The CS differs from the original bill in the area of oversight of FEMC by the BPE rather than the DBPR.

The CS removes the authority of the BPE relating to receiving complaints, investigations, discipline, and prosecution of engineers. It removes the authority of the BPE rather than the DBPR to contract with the FEMC to provide investigative, legal counsel, and prosecutorial services. The CS removes other provisions relating to the FEMC being required to report to and operate under the oversight of the BPE rather than the DBPR. The CS removes the authority of the BPE to submit an annual budget for funding the activities specified in the bill to the legislature separately from the DBPR budget.

On April 11, 2003, the Subcommittee on Commerce and Local Affairs Appropriations adopted one amendment exempting procurement of professional services by an agency from the requirements of section 287.057(23), Florida Statutes.