

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2464

SPONSOR: Governmental Oversight & Productivity Committee, Regulated Industries Committee and Senator Clary

SUBJECT: Engineering

DATE: April 22, 2003 REVISED: 4/24/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides clarification of examination requirements for engineers. It permits business organizations, rather than just partnerships or corporations, to become certified to practice engineering. It increases the caps on administrative fines from \$1,000 to \$5,000 and adds “restitution” as a penalty. It revises the duties of the Florida Board of Professional Engineers (board), the Florida Engineers Management Corporation (FEMC), and the Department of Business and Professional Regulation (department). It removes the department from direct oversight of many areas related to the regulation of professional engineers. It allows for the president of the management corporation to serve as executive director to the board. It gives the board authority to handle unlicensed activity enforcement.

The bill also provides that s. 287.057(23), F.S., is not applicable to the procurement of professional architectural, engineering, landscape, surveying or mapping services by an agency and firms providing such professional services are exempt from the payment of any fees required pursuant to that section. Section 287.057(23), F.S., relates to the on-line procurement of commodities and contractual services.

This bill substantially amends, the following sections of the Florida Statutes: 287.055, 471.013, 471.015, 471.023, 471.031, 471.033, and 471.038.

II. Present Situation:

Exam requirements

Section 471.615, F.S. does not clearly state that there are two separate exams, which applicants must pass in order to become qualified and licensed to practice engineering in Florida.

Certifications for partnerships and corporations

Section 471.023, F.S., provides only for partnerships and corporations to become certified by the Florida Engineers Management Corporation, upon approval by the Board of Professional Engineers, to practice or offer the practice of engineering to the public.

Disciplinary Proceedings

Section 471.033, F.S., provides for the acts that constitute grounds for which disciplinary actions may be taken, and the types of discipline that can be imposed by the Board of Professional Engineers.

Florida Engineers Management Corporation

The Florida Engineers Management Corporation was created under s. 471.038, F.S., to provide a single nonprofit corporation to administer, investigate, and prosecute cases for the board of professional engineering in accordance with chs. 455 and 471, F.S. The corporation is a public-private partnership and operates under an annual written contract with the department.

The department maintains authority to issue emergency and suspension restriction orders under s. 120.60, F.S. and to prosecute unlicensed activity cases pursuant to ss. 455.228 and 455.2281, F.S. The department employs a contract administrator to supervise the administrative, investigative, and prosecutorial activities of FEMC, and to ensure compliance with the contract and the provisions of chs. 455 and 471, F.S. The contract administrator also acts as a liaison for the department, the board, and FEMC to ensure the effective operation of FEMC. The corporation reimburses the department for the costs associated with the contract administrator, including salary and benefits, travel, and other related costs traditionally paid to state employees.

III. Effect of Proposed Changes:**Exam requirements**

The bill provides language that clarifies that there are two examinations, rather than two parts of one examination, that applicants must pass in order to become qualified and licensed to practice engineering in Florida.

Certifications for partnerships and corporations

The bill adds business organizations to the list of partnerships and corporations that are eligible for certification to practice engineering, or offer to practice engineering, to the public through its licensees. Business organizations include partnerships, corporations, business trusts, and other legal entities.

Disciplinary Proceedings

The bill increases the caps on administrative fines from \$1,000 to \$5,000 for each count or offense and adds “restitution” as a penalty that the board can impose.

Florida Engineers Management Corporation

The following changes to the duties and relationships between FEMC, the department, and the board are made by the bill.

- The bill removes stale language regarding initial appointments to the seven-member board of directors to FEMC.
- It removes the necessity of the department's concurrence to remove a member of the board of directors who was appointed by the board.
- It provides for selection of the president of FEMC who shall also serve as Executive Director to the board, subject to the board's approval.
- It eliminates the requirement for an annual contract and the approval of the corporation's articles of incorporation and bylaws by the department and the board.
- It eliminates the department's contract administrator and provides for a contract monitor. It allows for reasonable cost reimbursement for the monitor by FEMC rather than for all costs related to the administrator including salary and benefits, travel and other related costs. It does not specify the duties of the contract monitor.
- It allows for the board, rather than the department, to approve the liability insurance coverage to defend, indemnify, and hold harmless FEMC and its officers and employees, the department and its employees, and the state against all claims arising from state and federal laws.
- The bill requires persons not employed by FEMC who are charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond. Presently, employees of the corporation charged with this responsibility must have a performance bond.
- It changes the annual status report deadline from January 1 of each year to October 1.
- It provides that the corporation must develop and submit the performance standards and outcomes to the department, rather than developing the standards and outcomes with the department.
- Notwithstanding the provisions of ss. 455.228 and 455.2281, F.S., it gives the board authority to receive complaints and to investigate and deter the unlicensed practice of engineering. While the department was required to seek board advice regarding enforcement methods and strategies prior to expenditure of funds, it is now within the sole discretion of the board.
- The bill eliminates the prosecutorial functions of the department. However, the department retains the independent authority to open or investigate cases, or complaints, as necessary to protect the public health, safety, or welfare. The department may also request that the corporation prosecute such cases. The department retains the authority to issue emergency suspension or restriction orders pursuant to s. 120.60, F.S.

The overall effect of these changes appears to be that the department has less direct authority over the board, and FEMC becomes responsible for enforcement of unlicensed activity to the board. The bill shall take effect July 1, 2003.

The bill also provides that s. 287.057(23), F.S., is not applicable to the procurement of professional architectural, engineering, landscape, surveying or mapping services by an agency and firms providing such professional services are exempt from the payment of any fees required pursuant to that section. Section 287.057(23), F.S., relates to the on-line procurement of commodities and contractual services.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In the staff analysis for SB 526 from the 1997 legislative session, an issue was raised regarding the constitutionality of delegating police power authority to a private corporation. The staff analysis noted:

The DBPR has raised concerns about whether the bill improperly delegates the government's exercise of its police powers because of the delegation of investigative and prosecutorial support services to the private corporation. These functions are currently provided by department employees. The department's deputy general counsel expresses the opinion that the state is not precluded from delegating these powers to a private entity, but must do so with sufficient guidance and oversight, as set forth in applicable case law, to prevent a constitutional challenge for improper delegation. The bill's provisions for a contract administrator to *actively supervise* the contract should address the department's concerns about governmental oversight of the private entity's delegated duties.

This bill removes some of the oversight provisions that were placed in the enacting legislation in order to address the concerns about delegation of police power authority.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, this bill will have a very minimal positive fiscal impact on the department and/or the state government.

Currently, the Secretary of the department appoints a department employee to serve as Executive Director to the board. This is not a full time position, but instead is an additional duty of another position within the department. The bill allows the president of the management corporation to serve as Executive Director. This will reduce travel costs incurred by department staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill removes some of the traditional oversight mechanisms by which the Legislature and the executive branch oversee public/private entities that have been delegated functions and duties. Specifically, on page 11, lines 16 – 18, the bill removes the requirement that the department and the board of engineers approve the articles of incorporation and bylaws of the management corporation. Further, on page 11, line 30 through page 12, line 6, the bill removes the requirement that the department employ a contract administrator to actively supervise the administrative, investigative, and prosecutorial activities of the management corporation to ensure compliance with the contract provisions, as well as act as a liaison to ensure the effective operation of the management corporation.

In addition to the constitutional delegation of powers issue raised supra, it should be noted that in the analysis of the original bill that created the corporation, a question was raised regarding whether the use of a private corporation to regulate engineers may potentially violate federal and state antitrust laws. The bill analysis noted:

The department and the board are generally exempt from antitrust laws based on the state action immunity doctrine. For this doctrine to apply to the activities of the corporation, case law indicates that the enabling statute must provide sufficient regulatory guidelines and that a state agency (either the board or the department) must *actively supervise* the corporation in carrying out its regulatory responsibilities. Active supervision by the appointed contract administrator should help address this concern.

This bill, however, removes active supervision by a contract administrator, therefore potentially raising antitrust questions.

The bill also modifies the payment authority for the contract “monitor.” The management corporation currently is permitted to pay out of its allocated budget for the administrator all costs associated with the contract administrator, including salary and benefits, travel, and other related costs traditionally paid to state employees. The bill authorizes payment of reasonable costs associated with the contract monitor.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
