

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 692

INTRODUCER: Senator Stargel

SUBJECT: Engineers

DATE: February 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	Pre-meeting
2.	_____	_____	EE	_____
3.	_____	_____	GO	_____

I. Summary:

SB 692 amends s. 471.007, F.S., revising the qualifications and procedures for the appointment and reappointment of members to the Board of Professional Engineers and providing staggered terms.

The bill amends s. 471.013, F.S., revising the requirements for an applicant who fails more than three times who wishes to retake an examination in order to practice in the state as an engineer, and allowing additional attempts for an applicant delayed in taking the examination due to his or her service in the U.S. Armed Forces.

The bill amends s. 471.017, F.S., revising the requirements for license renewal for engineers by increasing professional development hours needed during a two-year renewal period from eight to twenty and capping hours that may be gained for specific activities.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Section 471.007(1), F.S., creates the Board of Professional Engineers (board) in the Department of Business and Professional Regulation (department). Members of the board are appointed by the Governor for terms of four years each.¹ The board consists of eleven members, nine licensed engineers and two laypersons who have never been engineers or members of a loosely related profession.²

¹ Section 471.007(2), F.S.

² Section 471.007(1), F.S.

Of the nine licensed engineers, the following six are required:³

- One structural engineer;
- One electrical or electronic engineer;
- One mechanical engineer;
- One industrial engineer;
- One engineering educator; and
- One from any engineering discipline other than civil engineering.

According to Florida Engineering Society (FES), it has been difficult to find individuals to fill these specified roles, and board membership is an extremely technical position with a “steep learning curve.”⁴ Currently, the new board members are appointed and begin terms at the same time every four years.

Section 471.013, F.S., sets out the examination prerequisites for a person to take an examination for the purpose of determining whether he or she is qualified to practice in this state as an engineer. The examination, provided by the National Council of Engineers and Surveyors (NCEES), is a two-part exam covering fundamentals (Part I) and principles and practice (Part II).⁵ Applicants for licensure by examination must apply to take the examinations and be graduates of a board approved engineering program defined in the rules.⁶ The acceptance of the fundamentals exam does not automatically mean acceptance to take the principles and practice examination.⁷

Section 471.013(1)(e), F.S., allows every qualified candidate to take either examination up to three times. Eligibility to take an examination after failing three times is conditioned on an applicant completing twelve additional college-level credit hours with grades of at least “C” or equivalent.⁸ For Part I, these additional courses are undergraduate courses in higher mathematics, basic sciences or engineering as described in the rules.⁹ For Part II, these additional courses shall be upper level courses in engineering as defined in the rules.¹⁰

Section 471.017, F.S., lays out the biennial renewal requirements for a licensed engineer. Section 471.017(3), F.S., requires a demonstration of continuing professional competency for renewal. Four professional development hours are required each year of the license renewal period for a total of eight hours.¹¹ Four hours shall relate to chapter 471, F.S., and the remaining four hours shall relate to the licensee’s practice area.¹² Section 471.017(3), F.S., authorizes the board to adopt rules consistent with the guidelines of the National Council of Examiners for Engineering

³ *Id.*

⁴ Conversation with Frank Rudd, Florida Engineering Society (FES)(Feb. 6, 2014). (Allowing varying term times allows experienced members to consistently occupy the board and introduce new members to their duties.)

⁵ Rule 61G15-21.001(1), F.A.C.

⁶ *See* rule 61G15-21.001(2), F.A.C.

⁷ *Id.*; *see also* s. 471.013, F.S.

⁸ Section 471.013(1)(e), F.S.; *see also* rule 61G15-21.007, F.A.C.

⁹ Rule 61G15-21.007, F.A.C.; *see also* 61G15-20.007(1)(a), (b) and (c), F.A.C. for described courses.

¹⁰ *Id.*; *see also* 61G15-20.007(1)(c), F.A.C. for described courses.

¹¹ Section 471.017(3), F.S.

¹² *Id.*

and Surveying (Council) for the purpose of avoiding proprietary continuing professional competency requirements¹³ and shall allow non-classroom hours to be credited.

The council's model rules section 240.30, Continuing Professional Competency guidelines are set forth for the purpose of providing consistency in those jurisdictions that adopt mandatory requirements and for those that wish to encourage voluntary usage, and to demonstrate a level of competency of professionals.¹⁴

The Florida Engineering Society (FES) supports engineering education, advocates licensure, promotes the ethical and competent practice of engineering and enhances the image and well-being of all engineers in the state of Florida.¹⁵ The FES has 3,200 members.¹⁶

III. Effect of Proposed Changes:

Board of Professional Engineers Membership and Appointment

SB 692 amends s. 471.007(1), F.S., to remove the requirement that members in specified fields make up the board. The bill adds the requirement that board members who are licensed engineers be selected and appointed based on their qualifications and experience to provide expertise to the board in civil engineering, structural engineering, electrical or electronic engineering, mechanical engineering, plumbing engineering, fire protection engineering, or engineering education.

Members appointed by the governor are required to be appointed from a list of qualified nominees submitted by the Florida Engineering Society, if such list is submitted.

The bill creates varying term periods for members who take the place of those exiting their role as of July 14, 2014. The terms of these immediate successors as determined by the Governor shall be staggered as follows:

- Three members are appointed for two years,
- Four members are appointed for three years, and
- Four members are appointed for four years.

The bill permits members to be reappointed for successive terms.

The bill permits the board to elect a provisional member if a vacancy on the board is open due to resignation, death, or other cause and is not filled by the Governor within three months, until the Governor appoints a successor.

Conditions to Retake an Examination

The bill amends s. 471.013, F.S., adding an option for the board, which can now require completion of a relevant examination review course, or the previously mandated additional

¹³National Council of Examiners for Engineering and Surveying, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

¹⁴ *Id.*

¹⁵ Florida Engineering Society About Us available at <http://www.fleng.org/mission.cfm> (Last visited Feb. 19, 2014).

¹⁶ *Id.*

college-level courses, as a condition of future eligibility to take an examination for an applicant who has failed that examination three times.

The bill allows an applicant who is delayed in taking the examination due to his or her service in the U.S. Armed Forces to have two additional attempts, five altogether, to take the examination before the board will require additional college-level courses or an examination review course.

Professional Development Hours

The bill amends s. 471.017, F.S., requiring at least ten professional development hours for each year of the license renewal period, for a total of twenty hours for each two-year renewal period. For each renewal period, subparagraphs are created under s. 471.017(3)(a), F.S., specifying continuing education hours:

- Four hours must relate to chapter 471, F.S., rules adopted under ch. 471, F.S., and professional ethics;
- Four hours must relate to the licensee's practice area; and
- The remaining twelve may relate to any topic pertinent to the practice of engineering.

The bill allows for up to twelve professional development hours to be earned by presenting seminars, in-house courses, workshops, professional or technical presentations, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice. It allows for up to four hours to be earned by serving as an officer or actively participating on a committee of FES. It allows courses already required under s. 471.095, F.S.,¹⁷ to apply to these requirements, except the hours relating to chapter 471, F.S., required under subparagraph one.

The bill also amends s. 471.017(3)(b), F.S., to require the board to adopt rules that are substantially consistent with the Continuing Professional Competency Guidelines of the Council.¹⁸

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Licensees actively participating in the design of engineering works or systems in connection with buildings, structures, or facilities and systems covered by the Florida Building Code shall take continuing education courses per this section,

¹⁸ NCEES, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

D. Other Constitutional Issues:

Section 471.007(2), F.S., now requires the Governor to appoint board members from a list created by the FES, which appears to conflict with the Florida Constitution, Art. IV, Section 1(a) since the statute would impinge upon the Governor's constitutional appointment power, *see Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (Fla. 1923).¹⁹ Requiring that the appointment must be made from such a list would elevate the FES' authority beyond the constitutionally permitted standard of simply providing advice, *see Schneider v. Sweetland*, 214 So.2d 338 (Fla. 1968).²⁰

According to the FES, the purpose of this list is to provide the governor options for his appointments in order to increase efficiency and timeliness of the appointment process.²¹ This goal may be achieved by a list of recommendations to the governor for him to consider when appointing members.

Section 471.007(4), F.S., may conflict with s. 20.165(5), F.S., in that the new provision allows board members to be appointed for "successive terms" with no apparent limitation on the number of such terms.²²

Section 471.007(4), F.S., also provides that the board may appoint "provisional members" to serve out a term of a vacant board member position if the Governor does not make an appointment within 3 months of the vacancy, which would appear to conflict with Art. IV, Section 1(a) since as a result of the new provision, the board, an entity other than the Governor, would be allowed to commission a state officer.²³

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill increases the hours of professional development, which may increase the cost for renewal applicants and increase revenue for continuing education providers.

C. Government Sector Impact:

The bill will create additional workload related to the review of disclosure materials and possible compliance actions; however, the additional workload should be able to be handled by existing staff.²⁴

¹⁹ 2014 Legislative Bill Analysis for SB 692, Florida Board of Professional Engineers. (Feb. 18, 2014).

²⁰ *Id.*

²¹ Conversation with Frank Rudd, Florida Engineering Society (Feb. 6, 2014).

²² 2014 Legislative Bill Analysis for SB 692, Florida Board of Professional Engineers. (Feb. 18, 2014).

²³ *Id.*

²⁴ *Id.*

VI. Technical Deficiencies:

The bill keeps the four-year term period for members but then describes a varying term membership plan for those serving after July 14, 2014. Language indicating that a four-year appointment will reapply in subsequent appointments may be appropriate.

VII. Related Issues:

The bill states that ten hours are now required for each year of the renewal period and then follows with the total amount of hours for specific items during the two year period. For consistency, it may be beneficial to state that a licensee must complete at least ten hours for each year of license renewal period, for a total of at least twenty years, and then state the specified required hours needed of the total twenty.

The bill amends Section 471.013(1)(e), F.S., to allow examination applicants who have failed the examination three times to take either college level courses, as presently allowed, or “a relevant examination review course” as a prerequisite to an additional sitting for the examination. The bill provides no rule making authority to the board to define the scope of “a relevant examination review course.”²⁵

The bill allows examination applicants delayed in taking the examination due to service in the Armed Forces two additional examination attempts, but grants no rulemaking authority to the board to implement this provision and no parameters around what the “delay” may encompass.²⁶

The bill amends s. 471.017(3), F.S., to increase the number of continuing education hours from eight hours per biennium to 10 for each year of the biennial renewal period. The bill also provides that coursework is acceptable if it “relate[s] to any topic pertinent to the practice of engineering.” The bill further allows continuing education hours to be earned by presenting or attending certain seminars, courses, conventions, etc., and allows members of the Florida Engineering Society to earn hours by serving in a leadership capacity of the FES. No rulemaking authority is granted to the board to implement these provisions. Additionally, providing continuing education credit to licensees for providing service to a private association may raise Substantive Due Process questions.²⁷ According to the Florida Board of Professional Engineers, there are two relevant questions that may arise. First, although service on the board as an officer or on a committee for the FES may be rationally related to keeping up professional competence, the bill lacks criteria for the type of service necessary, so even a committee set up to organize social events may be used by members for professional competence hours. Second, the bill only allows FES service to count, although there are similarly situated engineering associations, and there may not be a rational basis to single out service done for FES.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.007, 471.013, and 471.017.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
