HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS

BILL #: CS/CS/HB 827 Engineering
SPONSOR(S): Commerce Committee and Business & Professions Subcommittee; Toledo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N	Thompson	Anstead
2) Commerce Committee	22 Y, 0 N	Thompson	Hamon

FINAL HOUSE FLOOR ACTION: **GOVERNOR'S ACTION:** Approved
111 **Y's** 0 **N's**

SUMMARY ANALYSIS

CS/CS/HB 827 passed the House on April 25, 2019, and subsequently passed the Senate on May 1, 2019.

The bill amends provisions related to the licensure and regulation of professional engineers under the Department of Business and Professional Regulation (DBPR), and engineering contracting requirements under the Department of Transportation (DOT). Regarding engineering contract requirements under DOT, the bill prohibits entities from performing both design services and construction engineering and inspection services on projects that are wholly or partially funded by DOT and administered by a local governmental entity.

Regarding the licensure and regulation of professional engineers under DBPR, the bill:
- removes the requirement that engineers obtain a separate license (certificate of authorization) for their engineering firm;
- allows a licensed engineer to qualify an engineering firm without paying a separate licensing fee;
- provides an additional pathway for licensure as a professional engineer after receiving an engineering technology degree;
- requires applicants for licensure to submit proof of being 18 years of age or older;
- allows the Board of Professional Engineers to extend certain deadlines for granting or denying a license after an applicant fails to appear before the board;
- requires a temporary "registration" instead of a temporary "certificate" or "license" for out-of-state engineering businesses;
- requires successor engineers to assume full responsibility when relying on the work, findings, or recommendations of an engineer who previously sealed such documents, and releases the original engineer from liability for prior work assumed by the successor engineer;
- clarifies the types of structural projects that require a special inspection on a threshold building; and
- revises provisions related to alternate plans reviews by private providers.

The bill also removes the requirement that all delinquent status licensees, licensed by DBPR or a board in accordance with ch. 455, F.S., must apply for reinstatement with a complete application, and instead the bill requires boards, or DBPR if there is no board, to adopt by rule a process for reinstating applicants with void licenses.

The bill will have a significant fiscal impact on state revenues with an estimated reduction totaling $1,017,128 over the next three fiscal years.

The bill was approved by the Governor on June 7, 2019, ch. 2019-86, L.O.F., and will become effective on October 1, 2019.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Delinquent Status Licenses Issued by DBPR

Background

Currently, any professional, including engineers, who is licensed by DBPR is required to maintain an active status license in order to practice a profession regulated by DBPR. Failure to renew a license results in the license becoming delinquent. A delinquent status licensee must affirmatively apply with a complete application, as defined by board rule, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure to become active or inactive before the expiration of the current licensure cycle renders the license void. Currently, applicants for any professional license issued by DBPR with a previously voided license must start the application process over by completing an initial application, and must obtain a new license number.[1]

Proposed Changes

The bill removes the requirement that a delinquent licensee must apply with a complete application for active or inactive status, and instead requires boards to develop rules allowing a voided licensee to apply for reinstatement without completely repeating the initial application process.

Licensed Professional Engineers

Background

The practice of engineering[2] is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions.[3] The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC).[4] FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

Currently, there are over 44,000 active licensed engineers in the state of Florida.[5]

Continuing Education Requirements Prescribed by the Board of Professional Engineers

Background

The Board is required to prescribe by rule continuing education requirements for reactivating a license to practice professional engineering. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.[6]

[1] S. 455.271, F.S.
[2] Chapter 471, F.S., governs the licensing and regulation of professional engineers.
[3] S. 20.165(4)(a)11., F.S.
[4] S. 471.038(3), F.S.
[5] Florida Board of Professional Engineers, *About Florida Board of Professional Engineers*, https://fbpe.org/about/about-fbpe/ (last visited Feb. 27, 2019).
[6] S. 471.019, F.S.

The Board is also required to prescribe by rule continuing education requirements for renewing a license to practice professional engineering. Licensed professional engineers are required to complete nine continuing education hours for each year of the two-year license renewal period, totaling 18 hours every two years in order to renew their licenses. Of the 18 hours, one must relate to the laws and rules of professional engineering, one must relate to professional ethics, and four must relate to the licensee's area of practice. The remaining hours may relate to any topic pertinent to the practice of engineering.[7]

The continuing education course hours may be earned as follows:

- Presenting or attending seminars, in-house or nonclassroom courses, workshops, or professional or technical presentations made at meetings, webinars, conventions or conferences.
- Up to four hours of general continuing education course hours may be earned by serving as an officer or actively participating on a committee of a Board recognized professional or technical engineering society.
- Up to two hours of laws and rules and ethics continuing education course hours may be earned by serving as a member of the Legislature or as an elected state or local official.[8]

Proposed Changes

The bill removes the requirement that a delinquent licensee must apply with a complete application for active or inactive status, and instead requires boards to develop rules allowing a voided licensee to apply for reinstatement.

The bill requires the Board to establish by rule a reinstatement process for void licenses, and prohibits the continuing education requirements for reactivation from exceeding the current continuing education requirements for licensed professional engineers.

Certificates of Authorization

Background

Currently, both an individual engineer and their engineering firm must be licensed by FEMC and a separate fee must be paid by each. An engineering firm receives a "certificate of authorization" to operate in the state. Business organizations that offer engineering services in Florida are required to obtain a certificate of authorization. A "certificate of authorization" is defined as a license to practice engineering issued by FEMC to a corporation or partnership.[9] The certification is issued by FEMC pursuant to qualification by the Board. The law requires at least one principal officer or partner of the business, and all personnel who act on its behalf as engineers, to be licensed professional engineers.[10]

The fee for a certificate of authorization may not exceed $125.[11] The Board requires, by rule, applicants for an engineering business certificate of authorization to pay the following fees:

- initial certificate of authorization, which includes:
    - an application fee of $125;
    - an initial fee of $100; and
    - an unlicensed activities fee of $5.

[7] S. 471.017, F.S.
[8] *Id.*
[9] S. 471.005, F.S.
[10] S. 471.023, F.S.
[11] S. 471.011, F.S.

- renewal of a certificate of authorization, which includes:
    - a renewal fee of $93.75;
    - an unlicensed activities fee of $5; and
    - a delinquent fee of $25, if the certificate is delinquent.[12]

Proposed Changes

The bill removes the requirement that engineers obtain a separate business license (certificate of authorization) in addition to an individual license, but continues to allow engineering firms to operate in the state. Instead, a licensed engineer must "qualify" an engineering firm by indicating that they are responsible for the firm. The qualifying engineer must ensure supervisory control of all projects of the firm. The bill also prohibits the Board from charging a fee for qualifying a business organization. Thus, the bill eliminates the $125 initial application fee, $100 initial certificate of authorization fee, and the $5 unlicensed activity fee, for engineering firms.

The bill sets forth the following requirements for qualifying agents (Agents) of a qualified business organization:

- An Agent who terminates an affiliation with a qualified business organization must notify FEMC within 24 hours.
- If such Agent is the only Agent for the business organization, the business must be qualified by another Agent within 60 days after termination, and may not engage in the practice of engineering until it is qualified by another Agent. In this situation, the executive director of FEMC or the chair of the Board may authorize another licensee employed by the firm to temporarily serve as its Agent for up to 60 days for work related to incomplete contracts.
- An Agent is required to provide written notification to DBPR before practicing engineering in the licensee's name or in affiliation with a different business organization.

Temporary Certificates of Authorization or Licenses for Out-of-State Engineers

Background

Section 471.021, F.S., sets forth a process allowing temporary certificates to be issued to out-of-state engineers and engineering firms to practice in Florida. The temporary certificate or license is available to out-of-state engineers and engineering firms who meet certain requirements, pay a fee, and are only valid for work on one project for a period of one year.

Proposed Changes

The bill changes the temporary "certificate" to a temporary "registration" throughout the s. 471.021, F.S.

Examination Prerequisites

Background

Applicants for licensure as an engineer in Florida must graduate from a university with an engineering degree, have work experience, and pass two examinations, prior to obtaining licensure.[13]

An applicant for licensure as a professional engineer is required to successfully pass the fundamentals examination and the principles and practice examination prior to obtaining licensure. The work experience that is required prior to qualifying to take the fundamentals examination is described as

[12] R. 61G15-24.001, F.A.C.
[13] S. 471.015(2), F.S.

"active engineering experience of a character indicating competence to be in responsible charge of engineering."[14]

Prior to being permitted to sit for the fundamentals examination, an applicant is required to have achieved one of the following requirements:

- graduated from an approved engineering curriculum of four years or more in a Board approved school, college, or university, and have four years of active engineering experience indicating competence to be in responsible charge;
- graduated from an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, and have four years of active engineering experience indicating competence to be in responsible charge;
    - This applies only to those who enrolled or graduated prior to July 1, 1979; or
- in lieu of such education and experience requirements, have 10 years or more of active engineering experience indicating competence to be in responsible charge;
    - This applies only to those who notify DBPR before July 1, 1984, that she or he was engaged in such work on July 1, 1981.[15]

Essentially, only one of the above ways to become licensed is still used by applicants today because the option that includes a technology degree must have been completed prior to 1979, and the option that includes active engineering experience expired on July 1, 1984.

Proposed Changes

The bill removes the requirement that graduates have active responsible engineering work experience before sitting for the fundamentals examination, which will allow applicants to sit for the examination and then obtain experience.

The bill renews the ability of applicants with a technology degree to obtain licensure by removing the date limitation from the provision by deleting the phrase ‘‘enrolled or having graduated prior to July 1, 1979." Thus, applicants can use a technology degree as a prerequisite to sitting for the examination.

The bill also removes the option that authorized an applicant to qualify to sit for the examination by obtaining 10 years of work experience in lieu of the education requirements, which only applied to those who were engaged in such work on July 1, 1981, and notified the department prior to July 1, 1984.

The bill clarifies that a degree in engineering "science" is required in order to obtain licensure pursuant to the "engineering curriculum" education requirement.

The bill requires applicants for licensure to submit satisfactory proof to the Board that he or she is at least 18 years of age, and have active engineering experience of a character indicating competence to be in responsible charge of engineering. Specifically, before being certified for licensure, graduates from an approved engineering science curriculum must have four years of active responsible engineering experience, and graduates from an approved engineering technology curriculum must have six years of such experience.

[14] S. 471.013, F.S.
[15] S. 471.013(1)(a), F.S.

Personal Appearances

Background

During the application process, the Board is authorized to require a personal appearance of an applicant for licensure. The Board must provide applicants with adequate notice of the time and place of the appearance, and state the purpose and reason for requiring the appearance.[16] Generally, an application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.[17] Consequently, failure of an applicant to appear before the Board can result in an automatic denial of the application.

Proposed Changes

The bill extends the time period within which an application must be granted or denied until the applicant appears, if the applicant is required to make a personal appearance before the Board. The bill authorizes the Board to deny a license if the applicant fails to appear before the Board at either of the next two regularly scheduled board meetings.

Special Inspector Structural Inspections

Background

A Special Inspector is a licensed professional engineer that offers structural inspections on threshold buildings under construction.

A threshold building is any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.[18]

Local governments must require special inspectors to perform structural inspections on threshold buildings pursuant to a structural inspection plan.[19] Currently, this statute does not define structural terms or specify the types of structural projects that may be inspected.

Proposed Changes

The bill clarifies the types of structural projects on which special inspectors may be required to perform an inspection. These include “during new construction or during repair or restoration projects in which the structural loading of a building is being modified.”

Successor Engineers

Background

The Board is required to prescribe, by rule, seal requirements for professional engineers. The statute specifies that all final engineering documents must bear the engineer’s signature, date, and seal at a minimum, which serves as evidence of the authenticity of the documents.[20]

[16] S. 471.015(6), F.S.
[17] S. 120.60(1), F.S.
[18] S. 553.71(12), F.S.
[19] S. 553.79(5)(a), F.S.
[20] S. 471.025, F.S.; r. 61G15- 23.001(1), F.A.C.

Florida law does not currently address situations where a professional engineer succeeds and adopts the final engineering documents of a previous engineer. As a result, it may be unclear who is fully responsible for the final plans. The question has been raised in courts as to whether the previous engineer that completed some of the plans is still responsible for that portion of the work if the successor engineer completes the final plans for construction. For example, the Fifth District Court of Appeal recently determined that the original engineering firm may avoid liability for negligent design plans based on the signing and sealing of a subsequent set of design plans by a successor professional engineer.[21]

Proposed Changes

The bill requires successor engineers to assume full responsibility when using or adopting documents previously prepared and sealed by another engineer. Specifically, the bill requires a successor engineer seeking to reuse such documents to:

- be able to independently recreate all of the work done by the original engineer;
- assume full professional and legal responsibility by signing and affixing his or her seal to the assumed documents; and
- treat the documents as though they were the successor engineer's original product.

The bill releases the original engineer from any professional responsibility or civil liability for prior work assumed by the successor engineer.

For the purposes of this subsection, the term "successor engineer" means an engineer who is using or relying upon the work, findings, or recommendations of the engineer who previously sealed the pertinent documents.

Alternate Plans Review/Private Providers

Background

Traditionally, construction plans review and construction work inspections are done by government personnel, usually city or county building department personnel. Certain types of construction (such as restaurants, hospitals, etc.) are subject to state and/or federal requirements. Florida allows the use of “private providers” for some plans review and inspection services, subject to a number of requirements or restrictions.[22]

A private provider is a licensed engineer or architect who may be hired to perform building code inspection services by a property owner or contractor. Private providers are able to provide building plans, perform building code inspections within the scope of the provider’s license, and prepare certificates of compliance. Private providers also include building officials, inspectors, and plans examiners. However, they are limited to inspecting alterations or additions that are 1,000 square feet or less in a residential building.[23]

In order to use a private provider, a property owner or the owner’s contractor is required to notify the local building official when applying for a building permit, or may notify the local building official no less

[21] *Cherry C. Villanueva, as Personal Representative v. Reynolds, Smith and Hills, Inc., et al.*, 159 So. 3d 200 (Fla. 5th DCA 2015).
[22] University of Florida, *Alternative Plans Review and Inspections*, http://www.floridabuilding.org/FBC/publications/Fact_Sheets_0307/AlternativePlansIndustry060305revised.pdf (last visited Mar. 15, 2019).
[23] S. 553.791(1)(i), F.S.

than seven business days prior to the first scheduled inspection by the local building official or agency.[24]

In addition, after construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the owner or the owner's contractor is authorized to use a private provider. The notification must be to the local building official no less than seven business days prior to the next scheduled inspection.[25]

The local building official is required to act on a request for a permit within 30 days of receipt of the permit application and required affidavit. The permit must be issued or a written notice must be provided to the applicant identifying plan deficiencies. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit must be approved and issued by the local building official on the next business day. If the local building official provides written notice of plan deficiencies within the 30-day period, the 30-day period is postponed pending resolution of the matter. If the permit applicant submits revisions, the local building official has the remainder of the 30-day period plus five business days to issue the requested permit or to provide a second written notice stating which plan features remain noncompliant.

Proposed Changes

The bill amends s. 553.791, F.S., reducing the timeframes that property owners or their contractors have to notify local building officials of the use of private inspection providers, from seven business days prior to the first local official's or agency's scheduled inspection, to instead 2 p.m. local time, two business days before the first scheduled local inspection.

The bill reduces the 30-day period to 20-days within which a local building official must act on a permit application, which includes plans reviewed by a private provider, makes conforming changes, and authorizes private providers to perform their work outside of the local building official's normal operating hours including after hours, weekends, or holidays.

Construction Engineering Inspections

Background

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts.[26] The procedure contains a set of matrixes illustrating a variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict.[27]

A contractor, or his or her affiliate, qualified with DOT to bid on a road, bridge, or public transportation construction contract, may not also qualify to provide testing services, construction, engineering, and inspection services to DOT. This limitation does not apply to any design-build prequalification[28] and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement, that the limitation is not in the public's best interests with respect to a particular contract for testing, construction, engineering, and inspection services.[29]

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[24] S. 553.791(4), F.S.
[25] S. 553.791(5), F.S.
[26] Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts.
[27] Email from Jay Ferrin, Director of Legislative Affairs, Department of Transportation, RE: Amendment to 905, March 27, 2019 (on file with the Transportation & Infrastructure Subcommittee).
[28] Design build prequalification is pursuant to s. 337.11(7), F.S.
[29] S. 337.14, F.S.

From October 2017 to October 2018, DOT had a separate conflict of interest procedure for the Small County Road Assistance Program, Small County Outreach Program, and County Incentive Grant Program. For projects that did not impact the State Highway System, the procedure allowed a municipality or county to use its own procedures to mitigate conflicts of interest and excluded them from the requirements of DOT's conflict of interest procedures.[30] The current DOT procedures do not specifically address these local programs.

Proposed Changes

The bill provides that, notwithstanding any other provision of law to the contrary, for a project wholly or partially funded by DOT and administered by a local governmental entity, the design services and construction engineering and inspection services may not be performed by the same entity. This applies to local programs not covered under DOT's current conflict of interest procedures such as the Small County Road Assistance Program, Small County Outreach Program, and County Incentive Grant Program.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Eliminating the fees collected by the Board of Professional Engineers for issuance and renewal of certificates of authorization for engineering businesses will have a significant fiscal impact on state revenues. Over the next three fiscal years, the estimated reduction in revenues will total $1,017,128. This will result in a reduction of license fees, license renewal fees and unlicensed activity fees of approximately $108,560 in Fiscal Year 2019-20, $800,008 in Fiscal Year 2020-21, and $108,560 in Fiscal Year 2021-22.

   In addition, there will be a reduction in the service charge to General Revenue.[31]

2. Expenditures:

   The bill may result in a reduction of expenditures related to the reduced workload based on the deregulation of engineering firms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[30] *Id.*

[31] A service charge of eight percent is appropriated from revenue income deposited in specified trust funds, representing the estimated pro rata share of the cost of general government. *See* s. 215.20(1), F.S., relating to the service charge.

The changes in the bill may make it easier for people applying for licensure as an engineer and reduce the costs associated with obtaining a license for an engineering firm. Specifically, engineering firms will no longer be required to pay the following fees for:

- initial certificate of authorization, which includes:
  - an application fee of $125;
  - an initial fee of $100; and
  - an unlicensed activities fee of $5.
- renewal of a certificate of authorization, which includes:
  - a renewal fee of $93.75;
  - an unlicensed activities fee of $5; and
  - a delinquent fee of $25, if the certificate is delinquent.[32]

For public projects that are funded by DOT and administered by a local governmental entity, the bill prohibits the same entity from providing both design services and construction engineering and inspection services for the same project. As a result, the bill may reduce the size and scope of contracts available to design-build contractors, and increase the number and variety of public contracts available for other contractors.

D. FISCAL COMMENTS:

None.

[32] R. 61G15-24.001, F.A.C.