



The Florida Senate

Interim Project Report 2000-81

September 1999

Committee on Regulated Industries

Senator Tom Lee, Chairman

SUNSET REVIEW OF FLORIDA ENGINEERS MANAGEMENT CORPORATION

SUMMARY

Section 471.038, Florida Statutes, creates the Florida Engineers Management Corporation (the Corporation) and requires it to provide administrative, investigative, and prosecutorial services to the Board of Professional Engineers (the Board). The section will automatically repeal on October 1, 2000. It requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a performance audit of the Corporation prior to this repeal and report to the Legislature. OPPAGA staff has tentatively selected the areas of performance to examine and the measures to use in determining the Corporation's effectiveness in these performance areas. It will complete the performance audit in coming months and report to the Legislature and to this Committee. At that time, the Committee will address the legislation necessary to provide for a continuation of services to the Board.

BACKGROUND

Section 471.038, Florida Statutes, was enacted in 1997 to change the way administrative, investigative, and prosecutorial services are provided to the Board of Professional Engineers. The section creates the Florida Engineers Management Corporation as a not-for-profit corporation and moves the responsibility for providing these services from the Department of Business and Professional Regulation (the Department) to the Florida Engineers Management Corporation.

The section provides for an automatic repeal on October 1, 2000, and requires the Office of Program Policy Analysis and Governmental Accountability to conduct a performance audit of the Florida Engineers Management Corporation for the period of January 1, 1998, through January 1, 2000, with the Legislature to review the performance audit report and the effect of the statute in the 2000 Regular Session.

METHODOLOGY

Section 471.038, Florida Statutes, requires the Office of Program Policy Analysis and Governmental Accountability to conduct a performance audit of the Corporation for the period of January 1, 1998, through January 1, 2000, to determine the effect of the creation and operation of the Corporation on the cost and effectiveness of regulation of professional engineers. The objective of this Sunset Review was to work with the Office of Program Policy Analysis and Governmental Accountability as they conducted this performance audit and to draft any resulting proposed legislation.

FINDINGS

The Florida Engineers Management Corporation is a publicly-funded, not-for-profit corporation created to provide administrative, investigative, and prosecutorial services to the Board of Professional Engineers. Included in these services are the processing of applications for licenses, the administering of license examinations, the processing and investigating of complaints against licensees, and the presentation of administrative complaints to the Board for disciplinary action.

The statutory responsibilities of the Corporation are set forth in subsection 471.038(4), Florida Statutes. The statute requires that the Corporation:

- C Be approved by the Board and the Department to operate for the benefit of the Board and in the best interest of the state.
- C 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 of the Department of Business and Professional Regulation and must be lay persons not regulated by the Board.
- C Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

- C Operate under a written contract with the Department that is approved by the Board and renewed annually and that must provide for:
1. Approval of the articles of incorporation and bylaws of the Corporation by the Department and the Board.
 2. Submission by the Corporation of an annual budget that complies with Board rules for approval by the Board and the Department.
 3. Annual certification by the Board and the Department that the 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.
 4. Employment by the Department of a contract administrator to actively supervise the administrative, investigative, and prosecutorial activities of the Corporation to ensure compliance with the contract and the provisions of chapters 455 and 471 and to act as a liaison for the Department, the Board, and the Corporation to ensure the effective operation of the Corporation.
 5. Funding of the Corporation through appropriations allocated to the regulation of professional engineers from the Professional Regulation Trust Fund.
 6. Reversion to the Board, or the state if the Board ceases to exist, of moneys and property held in trust by the Corporation for the benefit of the Board, if the Corporation is no longer approved to operate for the Board or the Board ceases to exist.
 7. The securing and maintaining by the 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 Department to defend, indemnify, and hold harmless the Corporation and its officers and employees, the Department and its employees, and the state against all claims arising from state and federal laws.
- C Provide for an annual financial and compliance audit of its financial accounts and records by an independent certified public accountant in conjunction with the Auditor General. The annual audit report must be submitted to the Board and the Department for review and approval. Copies of the audit must be submitted to the Secretary of the Department and the Legislature together with any other information

requested by the Secretary, the Board, or the Legislature.

- C Submit to the Secretary of the Department of Business and Professional Regulation, the Board, and the Legislature, on or before 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.

Section 471.038, Florida Statutes, provides for an automatic repeal on October 1, 2000. It requires the Office of Program Policy Analysis and Governmental Accountability to conduct a pre-repeal performance audit of the Corporation for the period of January 1, 1998, through January 1, 2000, and report to the Legislature. The Legislature is then to review the performance audit report and the effect of the statute in the 2000 Regular Session.

As the initial step in the performance audit, the OPPAGA staff met with the Corporation, the Department, and committee staff to determine which of the Corporation's responsibilities would be used to evaluate its performance relative to the prior performance of the Department. A number of factors complicated this task.

- C It is difficult to measure the performance of most of the responsibilities transferred. Many of them are administrative in nature, and produce no actual product.
- C For many of the responsibilities, there is little that the provider of services can do to effect the quantity and quality of tasks performed. For example, the total number of license applications is outside the control of the services provider; it depends purely on the number of people who desire to obtain a license in a given year.

- C The Department's records were not annualized. For example, for any given year, the number of open investigations included both complaints received the prior year and not yet resolved and new complaints received that year. Similarly, the number of complaints closed included both complaints from the prior and the current year.
- C In some cases, tasks were begun by the Department, but completed by the Corporation, such as the Corporation finishing the work on a complaint that was filed with the Department. In these cases, it is unclear which entity should get credit for performance of this task.
- C No baseline performance levels were established for the Department prior to the transfer.

These factors skew any attempt to produce annual totals on tasks performed.

Necessarily, the focus for measuring performance of the responsibilities shifts to how quickly or efficiently they were performed. Here, too, there are complications. When the Department was providing these services, no records were kept of the length of time taken to provide any of the services because the only element of timeliness that was important was meeting any applicable statutory time requirements. Again, no baseline performance levels were established for the Department prior to the transfer.

There are also complications in determining cost effectiveness because some aspects of the budgeting process are different for the two entities. For example, the Department currently pays for a contract administrator and for some attorney functions, so the Corporation's total budget and expenditures do not reflect the entire cost of the program.

All of these complications make it difficult to determine true and accurate indicators of the relative performance of the Department and the Corporation in providing the services. The responsibilities that were initially selected include processing of applications, processing of complaints, and disciplining of licensees. Measures to

evaluate performance of these responsibilities then were selected. The measures selected to evaluate the processing of applications were: the number of complete applications processed, the number of complete applications denied, the number of application denials appealed, and the number of application denials appealed that were upheld. The measures selected to evaluate performance of the processing of complaints were the number of complaints processed and the number of complaints processed timely within 180 days. The measures selected to evaluate the discipline of licensees were the number of licensees disciplined and the number of disciplined licensees in compliance with the terms of discipline imposed.

The Office of Program Policy Analysis and Governmental Accountability has obtained data relevant to these measures for both the Department and the Corporation. However, in some cases there is conflicting data and in some cases the data has been revised. Work will continue to ensure that the data is accurate. When this work is complete, the measures will be calculated and the results compared for the Corporation and Department. Additional information may also be considered, such as a customer satisfaction survey conducted for the Corporation. When all the information is in, the Office of Program Policy Analysis and Governmental Accountability will compare the performance of the Corporation with that of the Department and will report its results to the Legislature and to this committee. At that time, the committee will evaluate the report and report legislation reflecting the desired method of providing services to the Board of Professional Engineers in the future.

RECOMMENDATIONS

Staff will continue to work with the Office of Program Policy Analysis and Governmental Accountability and to monitor the Office's performance audit. Upon completion of the audit, staff will draft legislation for consideration by the committee.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

Senators W.D. Childers and Buddy Dyer