


Review of the Repeal of the Florida Engineers Management Corporation



The seal of the Florida House of Representatives is circular, featuring a central illustration of a man in a suit standing on a shore, holding a document. In the background, there is a large palm tree, a ship on the water, and a sun with rays. The words "HOUSE OF REPRESENTATIVES" are written in a circle around the top, and "FLORIDA" is written at the bottom. There are three stars on each side of the bottom text.

**Prepared by the staff of the
Florida House of Representatives
Committee on Business Regulation & Consumer Affairs
Representative Mark R. Ogles, Chairman
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I. Introduction and Executive Summary

This report is a review of s. 471.038, Florida Statutes (F.S.), establishing the Florida Engineers Management Corporation (FEMC). As provided in its enacting legislation, s. 471.038, F.S., will repeal automatically unless reenacted by October 1, 2000. The Legislature is required to review the effect of the act during the 2000 Regular Session of the Legislature. This report is the staff research in support of that review.

The enacting legislation for s. 471.038, F.S., stated that the Legislature had determined “that the privatization of certain functions that are performed by the department for the board will encourage greater operational and economic efficiency and, therefore, will benefit regulated persons and the public.”

Chapter 471, F.S., contains the statutory provisions establishing regulation of professional engineers (engineers). Section 471.038, F.S. (97-312, Laws of Florida [L.O.F]), created the Florida Engineers Management Corporation (FEMC) for the purpose of performing staff duties for the Florida Board of Professional Engineers (Board). FEMC provides administrative, investigative, and prosecutorial services according to a contract with the Department of Business and Professional Regulation (DBPR). FEMC is established as a nonprofit corporation with a seven-member board. The FEMC board is composed of five registered engineers appointed by the Board, and two laypersons appointed by the Secretary of DBPR.

The bill establishing FEMC appropriated \$586,000 in start-up costs. The start-up money was provided to FEMC to obtain leases and fund purchases and operations in the time period between October 1, 1997, and June 30, 1998, prior to FEMC actually assuming its administrative responsibilities. FEMC took over the administrative duties for the Board of Professional Engineers on July 1, 1998. In its first full fiscal year (FY 1998-99), FEMC's budget allocation was \$2.17 million.

In FEMC's first year of operation, FEMC operating expenses were approximately 20% greater than the operating expenses for engineers under DBPR the previous year ((\$1,625,107 under FEMC vs. \$1,344,381 under DBPR).

However, that was to be expected. Licensure fees come in on a biennial basis. Fiscal Year 1997-98 (under DBPR) was, for engineers, what is known as a non-renewal year. Fiscal Year 1998-99 (under FEMC) was a renewal year. In a renewal year, both administrative activity and the costs to pay for that activity significantly increase.

Additionally, FEMC chose to fund activities that DBPR had not done. It had significantly higher publication and postage costs, primarily because it published and mailed (to each of the 25,000 licensed professional engineers, and all licensed building officials and inspectors) four newsletters, and a directory of licensed professional engineers, and issued one special bulletin on an engineering health and safety issue. In the previous year, DBPR had done none of these things.

On the other hand, DBPR had to pay for over \$600,000 in engineer related charges not paid for by FEMC. The largest component of this was the \$328,333 service charge to General Revenue that the department paid (unless specifically exempt, every state trust fund must pay 7.3% of its annual collections to the General Revenue Fund). DBPR also paid Department of Administrative Hearings (DOAH) charges (\$31,060) for formal hearing in disciplinary cases, and Attorney General charges for board counsel (\$76,350). DBPR pays these charges rather than FEMC because those government entities may not accept funds from private sector entities. DBPR also paid for the contract administrator (\$80,019) required by statute to supervise and review the operation of FEMC. Most of the remainder of the \$600,000 is related to disciplinary cases begun while still under DBPR, or to unlicensed activity cases which DBPR handles for all of its professions.

FEMC expended \$1,611,688.98 of its \$2.17 million appropriation, spending 25% less than it was allocated, and returning \$558,311.02 to DBPR. During this period, FEMC performed a

greater volume of application processing and complaint processing work than in the previous year under DBPR.

FEMC processed over 2 ½ times as many complaints as the DBPR staff (227 vs. 82), with over four times as many complaints being processed in a timely fashion (40 vs. 9). Put another way, FEMC processed 18% of its cases in a timely fashion, while DBPR processed 11% of their cases in a timely fashion.

FEMC also commissioned an independent firm (Kerr & Downs Research) to perform a customer satisfaction survey and issue a subsequent report, Florida Engineers Management Corporation 1999 Customer Satisfaction Survey. Specifically, the objective of the survey was to determine the level of service FEMC had provided to the following four constituencies:

- Professional Engineers
- Examination applicants
- Respondents (Engineer's against whom building code administrators had registered complaints)
- Building code administrators

The survey found that the quality of services under FEMC was judged by engineers and engineering examination applicants to be superior to that provided by DBPR, and the quality of FEMC's services was judged by building officials to be equal to or marginally superior than that provided under DBPR.

This report makes the following conclusions and recommendations:

1. FEMC should be reenacted, with a sunset date of October 1, 2004

It is concluded that FEMC operated in compliance with statutory requirements and the provisions of its contract with the DBPR. It is recommended that FEMC be reenacted. However, since legislative staff had only one year of data available for its consideration, this report further recommends that a new FEMC sunset date be established for October 1, 2004 (four years from the current sunset date), and that the legislature review the operation of the FEMC during the 2004 regular session. At that point, the legislature will have five years of FEMC operational data available, and can better judge the effectiveness of the privatization effort, and whether and when a future sunset should occur.

2. Private organizations can constructively “tailor” their services to a specific profession in ways that may not be practical for DBPR

It can be concluded that services provided by a private body, dedicated solely to serving a single profession, can deliver services better, in the sense that the services can be tailored to the needs and priorities of that single profession.

For instance, FEMC has chosen to undertake activities not performed by DBPR. Under FEMC, a directory (much like a phone book) of the 25,000 licensed engineers has been compiled and published. FEMC has chosen to publish their newsletter more often than the department (four times a year, versus DBPR having once so once in the last two years). FEMC has created a web site, and has issued special bulletins on public safety issues of importance to practicing engineers. All of these can be seen as products of the flexibility inherent in creating a private body, dedicated to serving the needs and responsibilities related to the regulation of a single profession.

DBPR does not perform activities specifically tailored to each profession's needs/wishes. DBPR must provide services for over two dozen professional boards, and "custom tailoring" their efforts to each profession may not be practical.

The survey commissioned by FEMC confirms that such custom tailoring produces customer satisfaction. The survey found that the quality of services under FEMC was judged by engineers and engineering examination applicants to be superior, and the quality of FEMC's services was judged by building officials to be equal to or greater than that provided under DBPR.

3. Meetings of the FEMC Board of Directors should be statutorily designated as subject to Florida's public meetings law.

It is concluded that it is not entirely not clear whether meetings of FEMC's Board of Directors are subject to the public meetings law. Whether they are subject to the law hinges on whether the board of directors of a statutorily created body exercising no regulatory authority, but expending money allocated in a state budget, is considered an agency.

FEMC staff indicates that their board meetings are, in fact, open and are noticed as if they are subject to s. 286.011, F.S. Also, FEMC legal counsel is of the opinion that their meetings are subject to Florida's public meetings law.

It is recommended that in order to clarify that the current practice of noticing the meetings and making them open to the public should continue as a matter of law, the FEMC board of directors meetings should explicitly be made subject to s. 286.011, F.S.

4. The legislature should consider whether a procedure should be put in place to respond should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR.

It is concluded that no avenue or mechanism establishing response procedures exists, should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR.

It is recommended that, should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR, a time frame should be established within which FEMC must come into compliance (if FEMC agrees that it has failed to comply), or a procedure to mediate a dispute over whether FEMC is or is not in compliance (should FEMC disagree regarding whether it is compliance).

II. Findings

A. The Law

Section 471.038, F.S. (97-312 L.O.F.), created the Florida Engineers Management Corporation (FEMC) for the purpose of performing staff duties for the Florida Board of Professional Engineers (Board). FEMC provides administrative, investigative, and prosecutorial services according to a contract with the Department of Business and Professional Regulation (DBPR). FEMC is established as a nonprofit corporation with a seven-member board, composed of five registered engineers appointed by the Board, and two laypersons appointed by the Secretary of DBPR.

The Board regulates approximately 25,000 licensed professional engineers in Florida. The enactment of s. 471.038, F.S., left in place the Board's normal regulatory duties, including authority for promulgating rules, final action on all license applications, and decision making authority for disciplinary penalties. FEMC provides administrative staff in support of each of these duties, including staff for processing complaints, performing investigations, and acting in the mode of prosecutors prior to and during disciplinary hearings before the Board.

Section 471.038, F.S., has not been modified since its initial enactment in 1997. The section authorizes FEMC to:

- Be a Florida nonprofit corporation.
- Provide authorized administrative, investigative, and prosecutorial services to the Board.
- Receive, hold, invest, and administer property and make expenditures for the Board.

- Have a seven-member board of directors composed of five registered engineers appointed by the Board, with two non-engineer members (laypersons) appointed by the Secretary of DBPR.
- Operate under a written contract with the DBPR and approved by the Board with the initial (interim) contract entered into no later than March 1, 1998.

Other provisions include requiring:

- The corporation to secure and maintain liability insurance coverage.
- The corporation's records to be public records.
- The control of all monies or property held by the Corporation to revert to the Board (or the state if the Board ceases to exist) if the Corporation is no longer approved to operate for the board.

- Complaint and investigation files to be public records once the investigation ceases to be active.¹ Active investigations involving physical or financial harm can be disclosed under certain circumstances

Additionally, there are a variety of provisions imposing controls in the form of review, auditing, required certification, or reporting responsibilities regarding the ongoing activities of FEMC. These controls include the following requirements:

- Annual renewal of the contract between FEMC and the DBPR.
- The DBPR must contract with an administrator to supervise the activities of FEMC.

¹ This provision is a departure from the confidentiality strictures imposed upon all other professionals regulated under the DBPR. Section 455.225(10), F.S., governing all other professionals under the DBPR (and until the enactment of s. 471.038, F.S., governing professional engineers as well), provides:

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first.

This provision means that the DBPR is prohibited, by law, from releasing any information about a complaint or investigation which is in progress, or which has been closed because the probable cause panel failed to find probable cause to proceed. The DBPR may not even acknowledge existence of such a complaint. In practice, this can lead to the following scenarios:

- 1) An inquiry about a professional currently subject to a dozen open investigations for serious violations can result in a response from the DBPR that the professional has no disciplinary record; and
- 2) A complainant cannot even get an explanation from the DBPR as to why his complaint did not lead to discipline against the professional.

Under the change set forth in s. 471.038(7), F.S., the confidentiality of complaints regarding engineers exists only so long as the investigation is "active." An investigation is no longer active once the case is dismissed or 10 days after the probable cause panel makes its finding.

So, once the investigatory case becomes inactive, the complaint and the information gained in the investigation become public record. Furthermore, the corporation may disclose the existence of the complaint at any point if the disclosure is: (a) in response to a licensure status inquiry, and (b) if the violation under investigation has the potential for substantial physical or financial harm to the public.

- The DBPR and Board must annually certify that FEMC is acting in compliance with the law and its contract with the DBPR (this certification must appear in the Board's minutes).
- FEMC must undergo an annual financial and compliance audit by an independent certified public accountant in conjunction with the Auditor General; and
- FEMC must submit an annual report to the Secretary, the Board, and the Legislature.
- The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) shall conduct a performance audit of the corporation for the period between January 1, 1999, and January 1, 2000.
- A repeal date of October 1, 2000, is part of the enacting language. This means that unless reenacted, the section establishing the existence of the corporation (s. 471.038, F.S.) shall be automatically repealed. Should that occur, staff duties for the Board would no longer be privatized, and DBPR staff would resume these duties.

B. FEMC Activity

1. FEMC Start-up and Compliance with the Law

The initial appointments to the FEMC Board of Directors were made in the summer of 1997 and they met in organizational session on September 8, 1997. In subsequent meetings during the fall of 1997, FEMC retained legal counsel and a corporate start-up consultant, drafted the corporate charter, prepared the organizational plan, and began acquisition of office space and equipment. By January 1, 1998, FEMC had retained a president, rented office space, finalized its corporate papers and had begun to work on the contract (formally known as the "Agreement Between the Florida Engineers Management Corporation and the

Department of Business and Professional Regulation”) to provide services to the Florida Board of Professional Engineers as set out in section 471.038, F.S.

The DBPR and FEMC agreed upon and executed an interim contract, and then an amended interim contract. In a letter dated June 16, 1998, the DBPR received confirmation from FEMC that the requirements of the statute and the proposed main contract had been complied with and that FEMC had in place the technical and professional staff needed to perform the functions required in the contract. On July 1, 1998, FEMC began providing administrative, investigative and prosecutorial services to the Board. On July 15, 1998, the main contract between the DBPR and FEMC was executed. That contract transferred to FEMC all functions mandated in s. 471.038, F.S. The contract additionally provided for the:

- 1) Release of operating funds from the DBPR to FEMC;
- 2) Method of handling funds by FEMC;
- 3) Operational responsibilities relating to licensure, examination, and prosecutorial services;
- 3) Quarterly accounting of funds by FEMC to the DBPR;
- 4) Detailed accounting records;
- 5) Maintenance of public records; and
- 6) Prohibition of expenditure of FEMC funds for a paid lobbyist.

Three additional provisions, inadvertently left out of the original contract, were added by addendum to the second annual contract. Those provisions:

- 1) Explicitly establish in the contract the amount of the year’s appropriation of funds (FEMC’s budget);
- 2) Require sufficient detail in the invoices for use in a pre-audit or post-audit; and

- 3) Prohibit any person placed on the “convicted vendor list” from contracting with FEMC.

On September 4, 1998, the Board and the DBPR certified (as required in s. 471.038[4][g]3., F.S.) that FEMC had, to that date, complied with all statutory requirements and had performed “in a manner that is consistent with the goals and purposes of the Board and in the best interests of the state.”

2. Efficiency and Effectiveness of Activities

a. Fiscal

The enacting legislation for FEMC contained an appropriation of \$586,000 for “start-up” costs. When an appropriations provision is embedded in a substantive bill, a follow-up budget amendment is necessary. That budget amendment (#EB-98-05) was requested and approved.

The start-up money was provided to FEMC to obtain leases and fund purchases and operations in the time period between October 1, 1997, and June 30, 1998, prior to FEMC actually assuming its administrative responsibilities. FEMC took over the administrative duties for the Board of Professional Engineers on July 1, 1998. Its first full fiscal year (FY 1998-99) budget allocation was \$2.17 million.

A comparison of the total costs for regulating engineers, in FY 1997-98 (under DBPR) and 1998-99 (under FEMC, with some costs remaining at DBPR), are set forth in the following table:

TABLE 1
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
Comparison of Department's (DBPR) FY 1997-98 Expenditures
to Florida Engineers Management Corporation (FEMC) FY 1998-99 Expenditures

DBPR for FY 1997-98 NON-RENEWAL YEAR		FEMC for FY 1998-99 RENEWAL YEAR	
Expenditure Categories	Amount	Expenditure Categories	Amount
Salaries & Benefits		Salaries & Benefits	
11.5 full time staff	<u>579,496</u>	13 full time & 2 part-time staff	<u>576,207</u>
Other Personal Services (Part-Time)	25,235	Other Personnel Services (Part-Time)	17,365
Board Member Compensation	10,000	FBPE Compensation	11,600
Professional Fees-Consulting	3,991	Accountant	19,480
Professional Fees-Court Reporters	1,615	Court Reporters	4,457
Legal/Expert Witnesses	106,204	Legal/Expert Witnesses	99,862
Legal/Expert/Fees	61	Consultants/Services-Computer	67,185
Independent Contractor-Other	17,969	Temp Employ-Agencies	4,718
Total Temporary Services	<u>165,075</u>	Total Temporary Services	<u>224,667</u>
Court Reporter Transcripts	892		
Legal/Employment Advertising	1,903		
State Personnel Assessments	1,013	Telephone & other communications	22,650
Telephones & other communications	9,871	Postage	118,532
Postage	4,098	Printing/Copying	104,458
Freight	281	Equipment Repairs & Maintenance	3,229
Printing/Copying	912	Bd. Prof. Eng. Travel In State	73,279
Equipment Repairs & Maintenance	1,035	Bd. Prof.Eng.Travel Out of State	14,326
Bd. Prof. Eng Travel In State	57,935	FEMC Board Meeting Expenses	13,321
Bd. Prof. Eng Travel Out of State	5,125	FEMC Travel In State	12,855
		FEMC Travel Out of State	793
		Training	1,386
Office Supplies	3,947	Office Supplies	31,472
Rent & Utilities	82,826	Rent, Utilities, Maintenance	61,937
Equipment Rental	2,027		
Publications & Dues	3,268	Publications & Dues	32,074
Payment for Information & Evidence	175		
State Awards	125	Other Expenses	70
Other Expenses	466	Prepaid Expenses	11,898
Furniture & Equipment	773	Furniture & Equipment	73,203

**DBPR for FY 1997-98
NON-RENEWAL YEAR**

**FEMC for FY 1998-99
RENEWAL YEAR**

Expenditure Categories	Amount	Expenditure Categories	Amount
Operating Capital Outlay (furniture)	810		
Acquisition of Motor Vehicles	520		
Legal Services - Attorney General	37,071		
Testing Services: NCEES Fees; Proctors/Testing/Facilities & Equip/ Exam Security	303,646	Testing Services: NCEES Fees; Proctors/Testing/Facilities & Equipment	225,965
Risk Management Insurance	21,022	Risk Management Insurance	22,785
Unlicensed Activity	975		
State Employees Hlth. Ins.	5,957		
TRC-Data Processing	32,859		
Div. Of Administrative Hearings	20,278		
Total Expenses	<u>599,810</u>	Total Expenses	<u>824,233</u>
Total DBPR Operating Expenditures	<u>1,344,381</u>	Total FEMC Expenditures	<u>1,625,107</u>
NON-OPERATING EXPENDITURES:			
Transfer to Administrative Trust Fund for services of Office of Secretary, General Counsel, Inspector General and Division of Administration for purchasing, accounting, mail and printing services, and other administrative services*	269,307	EXPENSES PAID BY DBPR for 1998-99:	
FBI Assessment	5	Administrative Costs	2,043
Refunds	10,706	General Counsel	4,085
Service Charge to General Revenue	79,181	DOAH Charges	31,060
Total Non-Operating Expenditures	<u>359,199</u>	Consumer Complaints-Regulation	1,970
		Legal-Regulation	14,893
		Contract Administration	80,019
		Investigations-Regulation	53,505
		Attorney General	76,350
		Service Charge to General Revenue	328,333
		Refunds	14,979
		Total DBPR Expenditures	<u>607,237</u>
Total Costs (DBPR) Non-renewal year	<u>1,703,580</u>	Total Costs (FEMC & DBPR) Renewal year	<u>2,232,344</u>

*The State Accounting System (SAMAS) does not allow a breakout of the individual numbers for this item.

The table shows that many of the expenditure categories contributing to this total have expenditures that are roughly equivalent between the two years. However, there are several notable exceptions:

Telephone & other communications: FEMC staff credits the difference between these figures (\$9,871 to \$22,650) to their dedicated Internet line costs (approximately \$400 a month) associated to their website, and to their claim that they simply return more long distance phone calls than had been the case under DBPR. It is impossible for staff to confirm or rebut this last assertion. Additionally, DBPR maintains a large integrated phone system for hundreds of employees. A smaller organization such as FEMC cannot duplicate their economies of scale regarding phone system costs. Also, long distance service for DBPR is on a WATS² line (Suncom), which allows for the payment of a stipulated lump sum charge at the end of the month, rather than being charged full price for each long distance call.

Postage: According to FEMC staff, the difference in these figures (\$4,098 to \$104,458) is explained by the much greater "mail-out" activity incurred under FEMC. Under DBPR, no newsletter was issued in FY 1997-98. FEMC issued four, and sent each newsletter to 25,000 licensed engineers and 1,000 building officials. FEMC also issued a special bulletin related to building structural concerns, mailed out a directory of licensed engineers, and had a larger volume of mailings due to it being a renewal year.

Printing/Copying: FEMC asserts that higher printing and copying costs (\$912 to \$104,458) are simply a function of the same factors that explained the higher postage.

Publications & dues: The difference in these figures (\$3,268 to \$32,074) is explained by noting that the cost of the FEMC-commissioned customer satisfaction survey (approximately \$30,000) is included in this category under the FEMC expenses.

² Wide Area Telecommunications Service

At the end of the table, beneath the total FEMC expenditures, a number of FY 1998-99 engineer related expenditures which the DBPR continues to pay are set forth. Those costs include:

- salary and benefits for the Attorney General's Office's counsel to the Board of Professional Engineers;
- fees and costs associated with hearings conducted by the Division of Administrative Hearings;
- fees for the use of the Department of Management Services equipment;
- salary and benefits and travel cost of the Department's Contract Administrator;
- Department administrative costs;
- unlicensed activity complaints investigations; and
- service charge to General Revenue.

These items total roughly \$607,000. Therefore, FEMC's FY 1998-99 costs together with DBPR's FY 1998-99 charges total approximately \$2,232,000.

The fees and costs associated with the Attorney General's Office (i.e., board attorney) and costs for hearings conducted by the Division of Administrative Hearings must be paid by DBPR, because such payments cannot be made to these entities by a private corporation. The other costs incurred by DBPR relate to its mandated oversight and review responsibilities regarding FEMC, unlicensed activity related to engineers, consideration of emergency suspension or emergency restriction requests, and the costs of preliminary review of complaints which are then referred to FEMC.

One element of these expenses, and the largest element, by far, is the service charge to General Revenue. Unless specifically exempt, every state trust fund must pay 7.3% of its annual collections to the general revenue fund. Licensure fees come in on a biennial basis. Fiscal Year 1997-98 was, for engineers, what is known as a non-renewal year. Fiscal Year 1998-99 was a renewal year. In a renewal year, both administrative activity (and the costs to pay for that activity) and revenue (with its associated 7.3% service charge to General Revenue) significantly increase. Since the engineers renew their licenses every two years there is a large fluctuation in the service charge to general revenue between renewal and non-renewal years. Therefore, the charge to General Revenue in the non-renewal DBPR year was \$79,161, while the same charge the next renewal FEMC year was \$328,333.

While it is technically accurate to discuss this figure as part of the engineers' non-operating expenses, it is somewhat misleading to describe it as an "expense," in that it does not represent increased costs due to any increased regulated activity. In other words, the "cost of regulation" should not be seen as going up simply because money being transferred to General Revenue is reflected under costs.

In comparing the cost of regulation under DBPR to the cost of regulation under FEMC, the costs under FEMC appear to be approximately 30% higher. However, in addition to the service charge to General Revenue just noted, there are a number of mitigating factors that argue against drawing such a straightforward conclusion:

- a. FEMC operates differently, prioritizes differently, and operates under different circumstances than did DBPR. As separate from the renewal-or-nonrenewal-year-issue, each year does not involve the same work load as the previous year. Under the first year of FEMC operation, more applications were processed and more complaints were investigated than under DBPR (see Table 3 for more details).
- b. Additionally, FEMC chose to undertake more responsibilities than DBPR performed. Under FEMC, a directory (similar to a phone book) of the 25,000 licensed engineers

was compiled and published. FEMC also published its newsletter more often than the department did (four times a year, versus approximately once every two years under DBPR), and expanded its content. FEMC has also issued "special bulletins" on high risk issues, and created and maintained a website.

FEMC operated at costs less than its allocated budget for FY 1998-99 (June 30, 1998 to July 30, 1999). The figures are provided as Table 2.

TABLE 2
COMPARISON OF FEMC ACTUAL EXPENDITURES TO BUDGET ALLOCATION

	1998-99 FY	1998-99 FY
	ACTUAL EXPENDITURES	BUDGET ALLOCATION
Salary & Expense	\$575,880.36	\$846,000.00
Rent	62,437.15	65,000.00
Telephone	22,649.51	24,000.00
Office Supplies	31,526.99	12,000.00
Copying & Printing	104,457.76	75,000.00
Postage	118,615.13	100,000.00
Insurance (3)	6,926.92	40,000.00
Equipment & Repair	3,228.68	6,000.00
Publications/Dues	32,144.17	5,000.00
Legal	3,741.39	30,000.00
Accounting	19,480.00	15,000.00
Training/Board Members	0.00	5,000.00
Board/Comm Mt. FAC	4,352.87	10,000.00
Travel Expense	96,726.09	75,000.00
Vehicle	0.00	10,000.00
Board Honorarium	11,827.32	16,000.00

Consultants	96,921.25	45,000.00
Court Reporters	4,456.95	75,000.00
Employee Training	1,385.98	15,000.00
Furniture & Equipment	72,412.24	15,000.00
Computer Maintenance	0.00	15,000.00
NCEES Fees for dues	86,700.00	180,000.00
Fee to A.G. Office	0.00	36,666.33
Testing Services	138,465.21	253,333.33
Technology Services	67,184.56	114,583.35
Temporary Employment	4,718.00	79,166.66
Retirement Contribution	33,552.47	6,250.00
Prepaid Expenses	<u>11,897.96</u>	<u>0.00</u>
Total	\$1,611,688.98	\$2,170,000.00

Comparing FEMC's actual operating costs against its FY 1998-99 budget allocation is a relatively simple matter. FEMC expended 25% less than it was allocated. On September 3, 1999, FEMC returned \$558,311.02 to DBPR, left over from its FY 1998-99 budget allocation.

FEMC's 1999-2000 budget contains the same allocation (\$2.17 million) as FY 1998-99. However, the projected expenditures in the specific categories within that FY 1999-2000 budget are reduced to make them closer to the actual expenditures experienced in FY 1998-99. By keeping the appropriation allocation at the same level, yet reducing the projected expenditures in each category, this allows for inclusion of a \$411,000 contingency fund. (See discussion of the contingency fund within the Issues section of this report.)

However, there is the question of whether the budget allocation was overestimated in the first place, since such privatization had never been done before. DBPR takes the position that the \$2.17 million budget allocation figure was indeed either mis-estimated or simply the product of a mistake. DBPR's FY 2000-01 Legislative Budget Request includes \$2.17

million for FEMC, however, the DBPR Secretary has indicated that she intends to ask for approximately \$1.6 million for FEMC in FY 2000-01.

b. FEMC Regulatory Activities

The following represents the volume of activities performed by FEMC in its first year of existence:

Received new applications for licensure	1,743
Administered Principles and Practice Exams	1,601
Administered Fundamental Exams	1,869
Issued PE licenses	1,587
Issued Business licenses	253
Issued EI (intern) Certificates	904
Renewed PE licenses	25,000
Renewed Business licenses	2,500
Received and accounted in fees and fines	\$4,000,000
Received complaints against Engineers	200
Investigated complaints against Engineers	180
Prosecuted administrative complaints against Engineers	50
Issued Final Orders of the Board	105
Published Newsletter	4 (mailed to 25,000 licensees)

FEMC also noted in its 2-page missive marking its first year of existence that it published a 1999 "Directory of Engineers and Engineering Business Applications" and other important information, and that its phone was "answered by a real person in 50,000 instances."

FEMC, in its first year of existence, performed a greater volume of application processing and complaint processing work than when those activities were being performed by DBPR staff. Comparisons between FEMC and DBPR activity relating to: (1) number of

applications processed; (2) number of complaints processed timely; and (3) number of complaints processed timely (defined as within 180 days) are provided in the following table.

**TABLE 3
APPLICANT AND COMPLAINT PROCESSING ACTIVITIES UNDER FEMC**

	FEMC (FY 98-99)	DBPR Staff (FY 97-98)
Number of completed applications processed	4,532	4,366
Number of complaints processed	227	82
Number of complaints processed timely (i.e., sent to probable cause panel in 180 days)	40	9

The average complaint processing time for FEMC -- the time between opening a case and sending it to the probable cause panel -- was 157 days. Most notably, FEMC processed over 2 ½ times as many complaints as the DBPR staff (227 vs. 82), with over four times as many complaints being processed in a timely fashion (40 vs. 9). Put another way, FEMC processed 18% of its cases in a timely fashion, while DBPR processed 11% of their cases in a timely fashion.

c. FEMC Customer Satisfaction Survey

In addition to the statutorily mandated audits and reviews, FEMC commissioned an independent firm (Kerr & Downs Research) to perform a customer satisfaction survey and issue a subsequent report, Florida Engineers Management Corporation 1999 Customer

Satisfaction Survey. Specifically, the objective of the survey was to determine the level of service FEMC had provided to the following four constituencies:

- Professional Engineers
- Examination applicants
- Respondents (Engineer's against whom building code administrators had registered complaints)
- Building code administrators

This survey was conducted during June and July, 1999. According to their report, a mail survey was utilized "because complete and accurate address information was available, while telephone data were not available."³

Several questions were asked in the survey. The responses were organized as follows, and a discussion of each of these response categories is also provided:

- 1) Awareness of FEMC
- 2) Contact with FEMC
- 3) Courteousness

³ There are approximately 25,000 professional engineers served by the Board of Professional Engineers. As described in their report, the survey was conducted in the following fashion:

A systematic, random sample of 1,496 professional engineers was drawn for the study. A total of 483 completed surveys were returned. The sampling error was $\pm 4.5\%$ given a 95% confidence level.

Approximately 3,000 individuals applied to take the Principles and Practice examination between July 1, 1998, when FEMC assumed responsibility for providing support services to the Board and June 22, 1999, when this study began. A systematic, random sample of 1,426 applicants was drawn for the study. A total of 461 completed surveys were returned. The sampling error was $\pm 4.2\%$ given a 95% confidence level.

A total of 127 professional engineers had complaints registered against them between July 1, 1998 and June 22, 1999, when the study began. All of these professional engineers were included in the study utilizing data collection techniques previously detailed. A total of 47 completed surveys were returned. The sampling error was $\pm 11.1\%$ given a 95% confidence level.

A total of 832 building code administrators were included in the study. A total of 155 surveys were completed. The sampling error was $\pm 7.0\%$ given a 95% confidence level.

- 4) Timely Answers
- 5) Not Passed Along
- 6) Knowledgeable
- 7) Comparison between services provide by FEMC vs. DBPR

AWARENESS OF FEMC

Awareness that FEMC has been providing administrative, investigative and prosecutorial support services to the Board was modest. The following percentages of those who responded were aware that FEMC was now providing support services previously provided by the DBPR:

Applicants for the Principles and Practices examination	21%
Professional engineers	36%
Building code administrators	31%

Another 10% or so of each group may have heard something about a private, non-profit organization taking over DBPR's support services.

CONTACT WITH FEMC

While it could be argued that all professional engineers have had contact with FEMC through the license renewal process, the following reflects the percentages of those who reported oral or written contact with FEMC staff:

Professional engineers	12%
Building code administrators	21%
Respondents	76%
Applicants for the Practice and Principles examination	70%

COURTEOUSNESS

All four constituencies served by FEMC assigned courteousness satisfaction levels of greater than 90%:

Professional engineers	98%
Building code administrators	92%
Respondents	91%
Applicants for the Practice and Principles examination	98%

TIMELY ANSWERS

Each group also provided a measure of the timeliness of FEMC staff's responses to questions and issues:

Professional engineers	92%
Building code administrators	82%
Respondents	67%
Applicants for the Practice and Principles examination	92%

NOT PASSED ALONG

Constituencies were asked if FEMC staff passed them along to other staff without providing answers to their inquiries. The following represents the percentage of responses expressing satisfaction and asserting that they were NOT passed along without receiving responses:

Professional engineers	89%
Building code administrators	64%
Applicants for the Practice and Principles examination	94%

KNOWLEDGEABLE

The following percentage of responses agreed that FEMC staff were knowledgeable about professional engineering issues:

Professional engineers	90%
Building code administrators	76%
Respondents	93%
Applicants for the Practice and Principles examination	95%

OTHER MEASURES OF SERVICE

Certain questions were asked of only one or two of the constituencies served by FEMC. Professional engineers were asked about their professional engineer certificates and ID cards — 93% agreed that these two documents were more professional looking than those issued prior to FEMC's involvement.

Likewise, 93% of applicants for the Principles and Practice examination agreed they were satisfied with how the overall application process was handled. Over one-half of respondents (53%) agreed that FEMC staff kept them informed about how they stood as the complaint process proceeded. Eight out of ten respondents (82%) and three out of four building code administrators (73%) agreed that FEMC staff were fair during the complaint proceedings. Ninety-three percent (93%) of respondents felt FEMC staff were available to answer questions.

WEBSITE & NEWSLETTER

Only 13% of professional engineers and 15% of building code administrators reported visiting the Board's website since July 1, 1998. Ninety-seven percent of professional

engineers and 100% of building code administrators who had visited the site expressed some level of satisfaction with the website.

Two-thirds of professional engineers (66%) and over one-half of the building code administrators (54%) claimed to have received the Board newsletters since July 1, 1998; 97% of professional engineers and 93% of building code administrators agreed the newsletter contained useful information.

COMPARE SERVICES BETWEEN FEMC AND DBPR

Perhaps the most relevant element, for the purposes of this report, was the comparison between the experiences of receiving services from FEMC versus services previously provided by DBPR:

ENGINEERS

Equally satisfied	61%
More satisfied with FEMC	24%
More satisfied with DBPR	3%

BUILDING CODE ADMINISTRATORS

Equally satisfied	63%
More satisfied with FEMC	19%
More satisfied with DBPR	18%

APPLICANTS FOR EXAMINATION

Equally satisfied	29%
More satisfied with FEMC	63%
More satisfied with DBPR	8%

C. Issues

Issues 1 and 2 are concerns identified by staff. The remaining issues relate to contentions between FEMC/Board and DBPR on proposed changes to s. 471.038, F.S.

1. What would happen if the DBPR and the Board failed to provide certification that FEMC was acting in compliance with the law and its contract with DBPR?

The law currently requires that the DBPR and Board of Engineers must annually certify that FEMC is acting in compliance with the law and its contract with DBPR. This certification must appear in the Board's minutes.

However, there is no provision as to what would happen if the DBPR or Board failed to provide such certification, should they determine that such compliance did not exist. It should be noted that DBPR and the Board did provide certification that FEMC is acting in compliance with the law and its contract with DBPR, for its first year of operation.

2. Should the meetings of the FEMC Board of Directors be subject to Florida's public meetings law?

Section 471.038, F.S., provides that FEMC is governed under laws relating to state agencies in several instances. The section specifically provides that its records are public records, subject to the provisions of s. 119.07(1), F.S.,⁴ and s. 24(a), Art. I of the State Constitution. Additionally, the section provides that public records exemptions set forth in ss. 455.217 and 455.229, F.S., for records created or maintained by the department, shall apply to records created or maintained by the corporation.

⁴ "Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee..."

On the other hand, s. 471.038, F.S., also provides that FEMC staff are not subject to other laws relating to state agencies. The section provides that FEMC's employees are not public employees for the purposes of chapter 110⁵ or 122, F.S.⁶ The section also provides that the provisions of s. 768.28, F.S.,⁷ apply to the corporation and deem it to be a corporation primarily acting as an instrumentality of the state. However, according to s. 471.038, F.S., it is not an agency within the meaning of s. 20.03(11), F.S.⁸

Public meetings requirements are set forth in s. 286.011, F.S.⁹ That section provides that all meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings. Section 286.0105, F.S., details the notice requirements for the public meeting.

The question therefore becomes whether the FEMC board of directors is one of the entities described under s. 286.011, F.S. Is it an "agency," or perhaps more specifically: Is it the variety of agency known as a "board?"

Chapter 20, F.S., defines an agency as a "...commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government."

"Board of trustees" is defined in the same chapter as "a board created by specific statutory

⁵ Public Officers, Employees, and Records

⁶ Public Officers and Employees; General Provisions

⁷ Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs

⁸ Organizational Structure; definitions

⁹ Public meetings and records; public inspection; criminal and civil penalties

enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”

Chapter 455 (the chapter setting forth the general regulatory provisions that govern DBPR) defines a board as:

any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-[1]455.261, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

The Government-in-the-Sunshine Manual, prepared by the Florida Attorney General, appears to indicate that the board of directors of a legislatively created private corporation which acts as an instrumentality of the state is subject to the public meetings law.¹⁰ The manual cites several AG opinions stating just that. Nothing in sec. 471.038, F.S., indicates any intention by the legislature to exempt the board from open government.

In addition, legal counsel to FEMC has offered the opinion that he believes that FEMC’s board of directors’ meetings are subject to Florida’s public meetings law.

3. Should FEMC be provided a contingency fund as part of its budget?

The Board of Professional Engineers has voted to request inclusion of a “contingency fund” as part of future (beginning in FY 2000-01) FEMC budgets. The FEMC Executive Director asserts that such a fund is extremely common in a private sector endeavor, and is needed to provide the requisite budget flexibility for unexpected expenses or business enhancement opportunities.

¹⁰ AGO 92-80, 97-17, 98-55, 98-42, 98-01, 97-32, 94-35, 94-34, and 94-32.

The DBPR opposes the inclusion of a contingency fund as a part of a FEMC budget. The DBPR states that an analogous flexibility is provided by the budget amendment process.

However, the FY 1999-2000 (current) budget provided by the department contains a \$411,700 contingency fund figure for FEMC. It should be noted that the existence of such a contingency fund category was the product of the previous DBPR administration.

It should be understood that when funds are appropriated for FEMC, the only figure that occurs in the appropriations act is the figure for the total appropriation. The FEMC budget allocation in FY 1998-99 and FY 1999-00 was \$2,170,000. Any explanation breaking that figure into sub-categories, for a more detailed accounting of how the \$2,170,000 is to be spent does not occur in the actual budget provisions found in the appropriations act, and therefore are not binding on the budget entity.

So, in effect, the argument over a contingency fund is actually an argument over the total appropriations figure, whether there will be extra money. In other words, since FEMC is not strictly bound to allocate the money in any specific categories, its only actual limit is found in the overall appropriations figure.¹¹

DBPR staff indicates that existence of the budget amendment process substitutes for any need for a contingency fund. Interim adjustments to the budget are processed as budget amendments through the Executive Office of the Governor and require a 14-day legislative consultation period. According to staff of the House Fiscal Responsibility Council, unless expedited due to an emergency situation, the budget amendment review and approval process can require up to two months from the date submitted by the agency. A budget amendment request is deemed an emergency if it is a disbursement required by law, such as payment of payroll, or if it is a product of a natural disaster, such as a hurricane.

¹¹ The DBPR FY 2000-01 Legislative Budget Request includes \$2.17 million for FEMC . The DBPR Secretary has indicated that she intends to ask for a maximum of \$1,615,000 for FEMC funding for FY 2000-01.

4. Should the contract between DBPR and FEMC be for a single year, or for multiple years?

FEMC has asked that the current annual contract between FEMC and DBPR be extended to a multi-year contract. FEMC indicates that multi-year contracts between a state agency and a private corporation are common, and states that the lack of a multi-year contract could cause difficulties with contracts or leases in which it needs to engage.

DBPR wants to retain the annual contract provision. It states that since the continued existence of FEMC is dependent on the annual appropriation, and since the amount of the appropriation is contained in the contract, the contract needs to be a one-year contract, reenacted each year.

5. Should FEMC be subject to the same examination security rules as boards under DBPR?

DBPR has expressed concerns that FEMC is not subject to the rule (Rule 61-11.014, Florida Administrative Code) that establishes examination security procedures that apply to all examinations handled by DBPR. This rule requires certain security procedures that must be in place during development, printing, storage, transportation, and administration of the examination.

FEMC maintains a level of security that is both less formal and less expensive than that required under DBPR rules. For instance, under DBPR rules, a security firm such as Brinks Security is employed to transport the examination, at a cost of several thousand dollars. Under FEMC, FEMC staff transports the examinations in their personal car. FEMC maintains their examinations in a locked room. DBPR keeps the examinations in locked room and adds additional security features, such as a sign in, sign out sheet.

FEMC contends that other states maintain security in the same fashion as FEMC does, and that more security features would increase security to an unneeded level, and at an unnecessarily high cost.

DBPR believes that without adherence to DBPR's security rules, FEMC risks the possibility that examinations could be stolen, copied, or otherwise compromised. DBPR further believes without such formalized security procedures being in effect, examinees dissatisfied with their grade would be in a position to challenge the examination's fairness, alleging that others who took and passed the examination may have pierced the security and unfairly gained an advantage. Defending such a challenge would be expensive, and losing such a challenge could entail having to recreate a question bank, costing tens of thousands of dollars.

6. Should FEMC be subject to additional "sunsets," and if so, how often, and when should the next sunset be scheduled?

When s. 471.038, F.S., was enacted in 1997, it was scheduled for sunset in 2000. When a law is scheduled for sunset, that means that the statute under sunset will automatically be repealed on a date certain, unless reenacted.¹² The legislature is required to review the section in the legislative session immediately prior to that date. If the legislature chooses to

¹² The rationale for sunsets was based on the realization that once a law -- particularly a regulatory law -- became established, reforming or eliminating that law was very difficult. Changing any law requires filing a bill or adopting an amendment in both the House and Senate, usually having each bill (or amendment) heard and passed in committee, having an identical bill passed in both the House and Senate, and then obtaining the signature of the Governor. Defenders of the status quo did not need to pass any legislation, they needed only to obstruct the effort to change the law at any of the critical and necessary junctures. Making (or changing) a law was designed to be very difficult, and instituting a sunset was an attempt to reverse this proposition, and place the disadvantages on those who wanted to retain the status quo. When a sunset existed, the defenders of the status quo HAD TO pass legislation in order to retain the law that they had. In such a situation, those who did not have a vested interest in retaining the law, but who wished to change the statute, had the advantage in that they could insist on their changes being accepted, else they would simply obstruct the process, and law would be repealed in its entirety. Accordingly, those who required the continuation of the law were at a disadvantage during sunsets.

reenact the section, then it must determine whether or not to reinstitute an additional sunset at a later date.

Between 1976 and 1993, there was a requirement for a systematic review of all statutory provisions which regulated the practice of professions, occupations, or businesses (the "Regulatory Sunset Act" [s. 11.62, F.S.]). Under that law, sunsets occurred on a 10-year cycle. That law was repealed in 1991, with the repeal becoming effective in 1993.

The FEMC has recommended that the sunset not be reinstated, or that it be scheduled for no sooner than 2010. They argue that a sunset review is inherently traumatic, that it creates a great deal of insecurity and anxiety with FEMC staff, those who FEMC serves, and those who FEMC works with or contracts with. They assert that it additionally demands a great deal of work from FEMC staff in responding to legislative inquiries generated by the existence of the sunset. They point out that every hour and every day spent satisfying concerns and inquiries from the legislature during the sunset process is time spent away from performing their core function of performing administrative duties for the Board of Engineers. They argue that the rationale that applied to the successful effort to remove the Regulatory Sunset Act (a great deal of work and time spent, with few changes made and virtually no instances of sunsets actually occurring) applies to FEMC's continued sunsetting, as well.

This sunset date determines when review must begin, and also the number of years of operation which will be included under the review. If the sunset date is set too soon, it can produce difficulties. When FEMC was established in 1997, a sunset date of October 1, 2000 was set. However, a sunset scheduled for 2000 necessitates that legislative staff begin review approximately one year prior to the that date. In the case of this review, the review had to begin in the summer of 1999, at a time when FEMC had barely produced one year of operational data (FY 1998-99).

III. Conclusions and Recommendations

The conclusions and recommendations that follow are based on the findings in this report.

A. FEMC should be reenacted, with a sunset date of October 1, 2004

1. It is concluded that FEMC operated in compliance with statutory requirements and the provisions of its contract with the DBPR. The report further finds that FEMC operated at costs less than its allocated budget for FY 1998-99 (June 30 1998 to July 30, 1999).

During that time period, FEMC performed activities in greater volume and at equal-to or higher customer satisfaction than when those activities were being performed by DBPR staff. Therefore, this report finds that FEMC has operated both efficiently and effectively.

2. It is recommended that FEMC be reenacted. However, since legislative staff had only one year of data available for consideration, this report further recommends that a new FEMC sunset date be established for October 1, 2004 (four years from the current sunset date), and that the legislature review the operation of the FEMC during the 2004 regular session. At that point, the legislature will have five years of FEMC operational data available, and can better judge the effectiveness of the privatization effort, and at that time judge whether and when a future sunset should occur.

B. Private organizations can constructively “tailor” their services to a specific profession in ways that may not be practical for DBPR

1. It can be concluded that services provided by a private body, dedicated solely to serving a single profession, can deliver services better than a large state agency

responsible for regulating a wide variety of professionals. Private body's services can better be tailored to the needs and priorities of that single profession.

For instance, FEMC has chosen to undertake activities not performed by DBPR. Under FEMC, a directory (much like a phone book) of the 25,000 licensed engineers has been compiled and published. FEMC has chosen to publish their newsletter more often than the department (four times a year, versus DBPR having once so once in the last two years). FEMC has created a web site, and has issued special bulletins on public safety issues of importance to practicing engineers. All of these can be seen as products of the flexibility inherent in creating a private body, dedicated to serving the needs and responsibilities related to the regulation of a single profession.

DBPR does not perform activities specifically tailored to each profession's needs/wishes. DBPR must provide services for over two dozen professional boards, and "custom tailoring" their efforts to each profession may not be practical.

However, the customer satisfaction survey commissioned by FEMC found that the quality of services under FEMC was judged by engineers and engineering examination applicants to be superior, and the quality of FEMC's services was judged by building officials to be equal to or greater than that provided under DBPR.

2. No Recommendation

C. Meetings of the FEMC Board of Directors should be statutorily designated as subject to Florida's public meetings law.

1. It is concluded that it is not entirely clear whether meetings of FEMC's Board of Directors are subject to the public meetings law. Whether they are subject to the law hinges on whether the board of directors of a statutorily created body exercising no regulatory authority, but expending money allocated in a state budget, is considered an agency.

FEMC staff indicates that their board meetings are, in fact, open and are noticed as if they are subject to s. 286.011, F.S. Also, FEMC legal counsel is of the opinion that their meetings are subject to Florida's public meetings law.

2. It is recommended that in order to clarify that the current practice of noticing the meetings and making them open to the public should continue as a matter of law, the FEMC board of directors meetings should explicitly be made subject to s. 286.011, F.S.

D. The legislature should consider whether a procedure should be put in place to respond should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR.

1. It is concluded that no avenue or mechanism establishing response procedures exists, should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR.
2. It is recommended that, should DBPR or the Board fail to provide certification that FEMC acted in compliance with the law and its contract with DBPR: (a) A time frame should be established within which FEMC must come into compliance (if FEMC agrees that it has failed to comply); and (b) A procedure to mediate a

dispute over whether FEMC is or is not in compliance should be established
(should FEMC disagree regarding whether it is compliance).

A-P-P-E-N-D-I-X

[1]471.038 Florida Engineers Management Corporation.--

(1) This section may be cited as the "Florida Engineers Management Corporation Act."

(2) As used in this section, the term:

(a) "Board" means the Board of Professional Engineers.

(b) "Board of directors" means the board of directors of the Florida Engineers Management Corporation.

(c) "Corporation" means the Florida Engineers Management Corporation.

(d) "Department" means the Department of Business and Professional Regulation.

(e) "Secretary" means the Secretary of Business and Professional Regulation.

(3)(a) It is the finding of the Legislature that the privatization of certain functions that are performed by the department for the board will encourage greater operational and economic efficiency and, therefore, will benefit regulated persons and the public.

(b) It is the intent of the Legislature that a single nonprofit corporation be established to provide administrative, investigative, and prosecutorial services to the board and that no additional nonprofit corporation be created for these purposes.

(c) It is further the intent of the Legislature that the corporation assume, by July 1, 1998, all duties assigned to it.

(4) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of part I of chapter 455 and this chapter. The corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112. The provisions of s. 768.28 apply to the corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The corporation shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of part I of chapter 455 and this chapter.

(c) Receive, hold, and administer property and make expenditures for the benefit of the board.

(d) Be approved by the board and the department to operate for the benefit of the board and in the best interest of the state.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

(f) 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 and must be laypersons not regulated by the board. The corporation shall select its officers in accordance with its bylaws. The members of the board of directors may be removed by the board, with the concurrence of the department, for the same reasons that a board member may be removed.

(g) Operate under a written contract with the department which is approved by the board and renewed annually. The initial contract must be entered into no later than March 1, 1998. The contract 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. This certification must be reported in the board's minutes.
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 part I of chapter 455 and this chapter 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. The 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. Such insurance coverage must be with insurers qualified and doing business in the state. The corporation must provide proof of insurance to the department. The department and its employees and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the corporation. Violation of this subparagraph shall be grounds for terminating the contract.
 - (h) 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 and the Legislature together with any other information requested by the secretary, the board, or the Legislature.
 - (i) Submit to the secretary, 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.
- (5) The corporation may not exercise any authority specifically assigned to the board under part I of chapter 455 or this chapter, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under chapter 120.
- (6) The department shall retain the independent authority to open, investigate, or prosecute any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 and to prosecute unlicensed activity cases pursuant to ss. 455.228 and 455.2281.
- (7) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217 and 455.229 for records created or maintained by the department shall apply to records created or maintained by the corporation. The exemptions set forth in s. 455.225, relating to complaints and

information obtained pursuant to an investigation by the department, shall apply to such records created or obtained by the corporation only until an investigation ceases to be active. For the purposes of this subsection, an investigation is considered active so long as the corporation or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation ceases to be active when the case is dismissed prior to a finding of probable cause and the board has not exercised its option to pursue the case or 10 days after the board makes a determination regarding probable cause. All information, records, and transcriptions regarding a complaint that has been determined to be legally sufficient to state a claim within the jurisdiction of the board become available to the public when the investigation ceases to be active, except information that is otherwise confidential or exempt from s. 119.07(1). However, in response to an inquiry about the licensure status of an individual, the corporation shall disclose the existence of an active investigation if the nature of the violation under investigation involves the potential for substantial physical or financial harm to the public. The board shall designate by rule those violations that involve the potential for substantial physical or financial harm. The department and the board shall have access to all records of the corporation, as necessary to exercise their authority to approve and supervise the contract.

(8) The Office of Program Policy Analysis and Governmental Accountability within the Office of the Auditor General shall conduct a performance audit of the corporation for the period beginning January 1, 1998, through January 1, 2000, and thereafter at the request of the Joint Legislative Auditing Committee.

History.--ss. 2, 5, ch. 97-312; s. 112, ch. 98-166.

[1]Note.--Section 5, ch. 97-312, provides that "section 471.038, Florida Statutes, shall stand repealed on October 1, 2000. The Legislature shall review the effect of this act in the regular session immediately prior to the repeal date."