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S 214 GENERAL BILL/2ND ENG by Economic, Professional and Utility Regulation (Similar H 1725)

Engineering/Revision: (SUNSET) deletes threshold exemption; provides for terms of members of Professional Engineers Board & deletes obsolete provisions re same; revises rulemaking authority; deletes obsolete language; expands rule-making authority re fees; provides schedule of fees; revises requirements for license reactivation; deletes requirements for prior departmental approval for incorporating, etc. Amends/revives/readopts Ch. 471; repeals 471.039. Effective Date: 10/01/89.

02/08/89 SENATE Prefiled

02/17/89 SENATE Referred to Economic, Professional and Utility Regulation

04/04/89 SENATE Introduced, referred to Economic, Professional and Utility Regulation -SJ 25

04/13/89 SENATE On Committee agenda—Economic, Professional and Utility Regulation, 04/17/89, 2:00 pm, Room-1C-(309)

04/14/89 SENATE Extension of time granted Committee Economic, Professional and Utility Regulation

04/17/89 SENATE Comm. Report: Favorable with 2 amendment(s) by Economic, Professional and Utility Regulation, placed on Calendar -SJ 180

04/25/89 SENATE Placed on Special Order Calendar -SJ 198; Passed as amended; YEAS 38 NAYS 0 -SJ 206

04/27/89 HOUSE In Messages

05/02/89 HOUSE Received, referred to Appropriations -HJ 314

05/09/89 HOUSE Withdrawn from Appropriations -HJ 432; Placed on Calendar; Substituted for HB 1725 -HJ 426; Read second time; Amendments adopted; Read third time; Passed as amended; YEAS 114 NAYS 2 -HJ 429

05/10/89 SENATE In Messages

05/18/89 SENATE Concurred; Passed as amended; YEAS 38 NAYS 0 -SJ 391

05/18/89 Ordered engrossed, then enrolled -SJ 391



05/23/89 Signed by Officers and presented to Governor -SJ 448

05/30/89 Approved by Governor; Chapter No. 89-30 -SJ 560

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: April 17, 1989BILL NO. SB 214DATE: March 15, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Krasovsky</u> 	<u>Krasovsky</u> 	1. <u>EPUR</u>	<u>FAV/2 amend.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Engineering

BILL NO. AND SPONSOR:
SB 214 by
Senate Economic, Professional &
Utility Regulation Committee

I. SUMMARY:

A. Present Situation:

The Regulatory Sunset Act repeals Chapter 471, Florida Statutes, relating to engineering, on October 1, 1989 unless reenacted by the Legislature. Staff has completed its review of this chapter in accordance with the provisions of s. 11.61, F.S. This bill implements the recommendations made in that report.

Chapter 471, F.S., regulates the practice of engineering in this state. The Board of Professional Engineers is established in the Department of Professional Regulation with the authority to make rules and set fees; however, the fees are capped by statute. The Department of Professional Regulation is authorized to license any applicant certified by the board as qualified to practice engineering and who has passed the licensing examination as provided for by law. This chapter provides for qualifications for practice and exemptions from licensure; temporary certificates to practice engineering in this state; and disciplinary proceedings.

B. Effect of Proposed Changes:

Staff recommends that the provisions of Chapter 471, F.S., be reenacted and amended to include the following substantive change:

Section 471.011, F.S., increases the fee caps charged by the board to fund its operations. The fee application for registration by endorsement is increased from \$50 to \$150; the fee for biennial renewal is increased from \$75 to \$150; and the fee for reactivation of an inactive license is increased from \$50 to \$150. These increases are proposed to prevent a future deficit of the board based on the current level of operation. Additionally, this section has been rearranged for ease of reading and subsection (2) of section 471.019, F.S., pertaining to fees for the renewal and reactivation of an inactive license, has been transferred to this section.

The following technical changes are made:

1. Section 471.003(2)(i)2., F.S., is deleted. The exemption from licensure of contractors designing certain mechanical systems of a construction project is unnecessary in light of provisions found in chapters 489 and 553, F.S., regulating contracting and building construction standards, respectively.

2. Section 471.007(2), F.S., is deleted. It speaks to the initial appointment of the board and is no longer necessary.

3. Section 471.013(1)(a)3., F.S., is deleted. The 10-year experience alternative prerequisite in lieu of education requirements is obsolete, as the applicant was required to notify the department prior to July 1, 1984.

4. Section 471.019(1), F.S., is clarified to include payment of a fee, in addition to applying to the department for reactivation, as a prerequisite for reactivating a license. Subsection (2) which pertains to the amount of the reactivation fee cap has been increased and transferred to this section.

5. Section 471.023(4), F.S., is deleted. This subsection states that persons seeking to incorporate under the provisions of this section must first obtain approval from the DPR before filing articles of incorporation with the Department of State. It does not serve to enhance the protection of the public and, therefore, is unnecessary.

6. A new subsection (2) is added to section 471.025, F.S., which protects the public by requiring that engineers sign and seal certain documents pursuant to a prescribed seal. The new subsection requires that a licensee using an advertising medium list his license number in the advertisement. The same requirement was mandated of the architects last year (Chapter 88-383, Laws of Florida). This is a public protection measure that will enhance the DPR's capability to uncover unlicensed activity.

7. Section 471.033(1), F.S., sets forth grounds for disciplinary actions. This provision is clarified to reflect that having a license acted against in another state for any act that violates this chapter or chapter 455, F.S., constitutes grounds for disciplinary proceedings under Florida law. Also this section is amended to reflect that a plea of nolo contendere (no contest) creates a rebuttable presumption of guilt to the underlying criminal charge. However, the board, during disciplinary proceedings, must allow the disciplined person to present evidence relevant to the underlying charge and circumstances surrounding the plea. This change conforms to case law regarding such pleas. [Kinney v. Department of State, 501 So 2d 129 (Fla.App. 5 Dist., 1987)].

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This act and board rules establish fees for applications, examinations, licensing, renewals, reinstatements, recordmaking and recordkeeping. These fees are paid by the applicants and practitioners of the profession. It is generally assumed that the direct cost of regulation are passed on to the consumer through the practitioner's fee schedules. There appears to be no reason why the burden of direct regulatory costs would not be so shifted in the case of engineering. As mentioned in the sunset report, the effects on the public of the regulation of engineering services are minimal.

B. Government:

The cost of administering Chapter 471, F.S., is paid for with fees collected from applicants and practitioners and deposited in the DPR's Trust Fund. The estimated annualized figure of revenues collected for fiscal year 1987-88 is \$906,319 and the cost was \$946,178. It only appears that the board is running at a deficit due to the biennial license renewal cycle. These figures do, however, reflect the need for an increase in the fee caps as discussed in this staff analysis and the sunset report on which this bill is based.

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III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by EPUR:

This amendment deletes the requirement that a registered engineer, or a corporation or partnership holding a certificate of authorization, include its certificate number in advertisements.

#2 by EPUR:

Corresponding title amendment.

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1725 (similar provisions passed as 2ND ENG SB 214)
RELATING TO: Engineering
SPONSOR(S): Committee on Regulatory Reform and Representative Morse
EFFECTIVE DATE: October 1, 1989
COMPANION BILL(S): SB 214
OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SUMMARY:

This bill would revise and reenact chapter 471, Florida Statutes, regulating the practice of engineering. Future Sunset review and repeal would be scheduled on October 1, 1999.

A. PRESENT SITUATION:

Chapter 471, Florida Statutes, is scheduled for Sunset repeal on October 1, 1989, and has been reviewed pursuant to section 11.61, Florida Statutes. The chapter regulates the practice of engineering. It is administered by a nine member Board of Professional Engineers within the Department of Professional Regulation. The chapter requires that individuals, corporations, and partnerships be licensed by the department before practicing engineering or using titles indicating that they are registered engineers. Several exceptions and exemptions from the licensure requirements are provided. The statute establishes criminal penalties for certain prohibited acts. It is a first degree misdemeanor to practice engineering or use titles implying that an individual is an engineer without holding a valid license in this state.

The board is given general rulemaking authority and specific authority to establish fees for licensure; to adopt rules providing for the review and approval of schools or colleges and course-work; to prescribe a form of seal to be used by licensees; to specify what acts or omissions constitute grounds for discipline; and to impose certain disciplinary actions.

To be licensed, applicants must demonstrate good moral character, meet minimum requirements of education and experience, and demonstrate through satisfactory performance on written examination that they are knowledgeable and competent to practice engineering.

Corporations and partnerships may obtain a certificate of authorization to practice engineering or offer engineering services through registered engineers if one or more of the principal officers or partners and all personnel who act as engineers in behalf of the business are registered engineers. Corporations seeking certification must obtain approval from the department before filing or amending their articles of incorporation. Corporations and partnerships are subject to the same disciplinary actions as registered engineers.

Applicants may be licensed by endorsement if they meet Florida's education and experience requirements and have passed a substantially equivalent examination, or if they hold a license in another state issued under substantially identical criteria as existed in Florida at the time of original licensure. Engineers who are registered in another state and out-of-state firms may obtain temporary certification for limited practice in this state.

B. EFFECT OF PROPOSED CHANGES:

The bill would revise and reenact chapter 471, Florida Statutes, to continue regulation of the practice of engineering. Four substantive changes would be made:

The bill would expand the board's rulemaking authority by authorizing it to adopt rules as necessary to carry out duties and authority conferred upon it by chapter 455, Florida Statutes. Currently the board is authorized to adopt rules pursuant to chapter 471, Florida Statutes.

The bill would raise the fee caps for licensure by endorsement, license reactivation, and renewal of inactive licenses from \$50 to \$150 each and would increase the biennial renewal fee cap from \$75 to \$150. The bill would set fee caps for the initial license fee and the fee for a certificate of authorization. The bill would make the application fee non-refundable. These changes would allow the board to raise fees as necessary to off-set any future deficit and to retain application fees to cover processing costs. Fee caps for this regulation have been increased only once during the past ten years.

The bill would delete the requirement that corporations receive prior approval from the department before filing or amending their articles of incorporation.

Each registrant and each certified corporation and partnership would be required to display its certificate of registration or certificate of authorization number in certain advertising media.

Technical changes that would be made are described in the section-by-section analysis below.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Deletes an exemption applicable to licensed electrical, plumbing, air-conditioning, and mechanical contractors who install certain systems on construction projects which are less than 5,000 square feet and designed for public assembly. The exemption is meaningless in light of the provisions of sections 471.003(2)(i)1 and 553.79(6), Florida Statutes. Section 471.003(2)(i)1, Florida Statutes, exempts such contractors on construction projects which involve electrical, plumbing, air-conditioning and refrigeration systems valued at or below \$50,000 and which involve systems at or below specified complexity thresholds. Section 553.79(6), Florida Statutes, prohibits the issuance of building permits for any building, regardless of size or purpose, without the sign and seal of a professional engineer if the project involves systems at or above the same cost and complexity thresholds.

Section 2. Amends the definition of "certificate of authority" to comport with usage of the term "certificate of authorization" throughout the chapter.

Section 3. Deletes obsolete provisions related to the initial appointment of the board and preserves the statutory requirement for 4 year terms of office.

Section 4. Expands the board's rulemaking authority to include duties and authorities conferred on the board by chapter 455, Florida Statutes.

Section 5. Deletes an obsolete provision related to the physical relocation of the board's headquarters.

Section 6. Revises section 471.011, Florida Statutes, to include all fee language; to provide for a non-refundable application fee; and to increase fee caps for certain fees.

Section 7. Clarifies provisions related to the reactivation of inactive licenses.

Section 8. Deletes the requirement for prior approval of articles of incorporation as a prerequisite for certification of engineering firms.

Section 9. Requires all licensees to publish their certificate of registration or certificate of authorization numbers in certain advertising media. Provides that business cards and business stationery are not considered advertising media for the purposes of this requirement.

Section 10. Corrects a statutory reference regarding first degree misdemeanor penalties for prohibited acts by deleting a reference to section 775.084, Florida Statutes. The section is no longer applicable to first degree misdemeanor convictions.

Section 11. Revises grounds for disciplining engineers and firms by limiting certain circumstances in which disciplinary action may be taken. The bill specifies the effect of a plea of nolo contendere to conform to case law regarding such pleas.

Section 12. Corrects a cross-reference.

Section 13. Makes technical changes to correct a cross-reference and clarify local effects of chapter.

Section 14. Repeals section 471.039, Florida Statutes, to delete obsolete language.

Sections 15 & 16. Save chapter 471, Florida Statutes, from Sunset repeal and schedule future review and repeal, pursuant to section 11.61, Florida Statutes, on October 1, 1999.

Section 17. Provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Changes proposed by PCB 14 will have only minimal effects on direct costs to engineering licensees.

All licensees may incur limited additional costs in complying with the requirement that licensees publish their certificate numbers in certain advertising media.

It is generally assumed that licensure costs are passed on to the consumer in fees for professional services. This bill would continue licensure costs associated with the regulation of engineers. The economic impact of these costs is believed to be minimal.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

This bill continues the regulation of engineers by the Board of Professional Engineers within the Department of Professional Regulation. Fees paid by applicants and licensees are deposited in the Professional Regulation Trust Fund. Revenues and expenditures collected and incurred by the Board of Professional Engineers for FY 89-90 as projected as follows:

Cash Balance 7-1-89:	\$ 892,757
Anticipated Revenues:	\$ 878,950
Estimated Expenditures:	\$1,399,340
Cash Balance 6-30-90:	\$ 372,367

III. LONG RANGE CONSEQUENCES:

A significant potential for harm exists from the incompetent practice of engineering. This bill would protect the public's health, safety, and welfare by reenacting chapter 471, Florida Statutes.

IV. COMMENTS:

This bill is consistent with the 1989-90 Legislative Issues Conference Policy Statement on Governmental Efficiency and Effectiveness. The bill is a result of a systematic review and evaluation of the regulation imposed and administrative structure created by chapter 471, Florida Statutes. The review was conducted according to criteria established by the Regulatory Sunset Act, section 11.61, Florida Statutes. The bill reflects the findings and recommendations resulting from that review.

Eliminating the certification prerequisite which requires corporations to obtain prior approval from the department before filing their articles of incorporation should not lessen the public protection aspects of the chapter. Firms which incorporate under the provisions of chapter 607, Florida Statutes, are required only to state the general purpose for incorporating and not the specific nature of their business.

Requiring licensees to publish their certificate number in certain advertising media should facilitate consumers' ability to identify registrants and should assist the department in identifying unlicensed activity.

V. AMENDMENTS:

None.

VI. FINAL ACTION:

HB 1725 was laid on the table under the rules. The provisions of HB 1725, with one exception, were passed by the Legislature as the 2ND ENG/SB 214. That bill did not include the provision which would require engineering licensees to publish their certificate numbers in certain advertising media. The 2ND ENG/SB 214 was approved by the Governor as Chapter 89-30, Laws of Florida.

VII. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Sheila A. Hill
Sheila A. Hill

SECOND COMMITTEE OF REFERENCE:
Prepared by:

APPROPRIATIONS:
Prepared by:

Staff Director:

Booter Imhof
Patrick L. "Booter" Imhof

Staff Director:

Staff Director:

SH/cm