

*oppaga*

# Performance Review



March 2000

Report No. 99-42

## Privatizing Regulation of Professional Engineers Has Improved Services, But Increased Costs

### *at a glance*

1997 legislation moved the services that supported the Board of Professional Engineers from the Department of Business and Professional Regulation to a private, not-for-profit corporation, the Florida Engineers Management Corporation. Although regulatory costs have increased, the corporation processed more complaints over comparable time frames than had the department. The corporation also has established a stronger compliance monitoring system.

The Legislature should consider establishing performance expectations, such as expected cost savings or performance improvements, if additional regulatory boards are privatized. The Legislature should also consider the cumulative impact of privatizing additional boards, which can increase the costs allocated to the boards that remain under the department and thus result in raising some professional license fees or reducing board services.

### Purpose

Section 471.038(8), *F.S.*, requires the Office of Program Policy Analysis and Government Accountability to review the Florida Engineers Management Corporation for the period January 1, 1998, through January 1, 2000. In this review we compared the performance and costs of the Florida Engineers Management Corporation to the performance and costs of regulating professional engineers under the Department of Business and Professional Regulation. We also identified issues that should be considered if privatization of additional professional boards is considered by the Legislature.

### Background

Chapter 471.038, *F.S.*, established the Florida Engineers Management Corporation as a private not-for-profit corporation to provide administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers. These functions were transferred from the Department of Business and Professional Regulation with the expectation of greater operational and economic efficiency.

## Performance Review

During Fiscal Year 1997-98, the Legislature directed the department to release \$586,000 in startup costs from the Professional Regulation Trust Fund to the Florida Engineers Management Corporation.<sup>1</sup> While the 1997-98 cases were shared by the two the services were provided in separate fiscal years. The corporation began its first full year of operation during Fiscal Year 1998-99. The corporation serves approximately 26,000 licensed engineers with 13 full-time staff. The Legislature appropriated the corporation \$2.17 million from the Professional Regulation Trust Fund in Fiscal Year 1999-2000.

The department contracts with the corporation for the regulatory services and employs a full-time contract manager to provide active supervision of the corporation and to determine compliance with contract requirements. In addition, the department retains the responsibility for issuing emergency orders and for prosecuting unlicensed activity cases.

## Performance and Costs

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The Florida Engineers Management Corporation was created with the expectation that it would improve the economic and operational efficiency of regulatory services provided to professional engineers. However, little baseline data was collected or maintained on the performance of the Department of Business and Professional Regulation prior to the privatization, and no specific performance standards were established that the corporation was expected to attain.

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<sup>1</sup> The Professional Regulation Trust Fund is funded through fees paid by the various professions regulated by the department, which includes fees paid by professional engineers.

### *The corporation is processing more complaints in a more timely manner than did the department*

Two important areas of the corporation's responsibilities are receiving complaints against licensed professional engineers and completing investigations of these cases in a timely manner. In 1998-99, the corporation's first full year of operation, it received 100 complaints against licensed professional engineers, a 22% increase over the previous fiscal year.<sup>2</sup> The corporation reviewed each case, and those that were found to be legally sufficient were investigated by staff and a report was prepared for consideration by the board's probable cause panel. These investigations frequently required contracting for the opinion of an outside expert.

The corporation determined that 65 of these complaints were legally sufficient and were forwarded to the probable cause panel. This was almost twice the number of legally sufficient cases received in each of the two previous fiscal years when the department was involved in this function.<sup>3</sup>

For the 65 cases that were solely the corporation's responsibility, the corporation's timeliness in investigating and reporting to the probable cause panel improved over the department's. As shown in Exhibit 1, during Fiscal Year 1998-99, the corporation reported 40% of the complaints to the probable cause panel within six months, compared to 30% of the cases investigated by the department in Fiscal Year 1996-97.<sup>4</sup> The corporation also reported an increased number and percentage of cases to the probable cause panel within nine months.

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<sup>2</sup> This does not include 44 unlicensed activity complaints that were referred to and handled by the Department of Business and Professional Regulation. It also does not include 47 cases that were opened by the department in Fiscal Year 1997-98 and subsequently transferred to the corporation for processing.

<sup>3</sup> The department was responsible for investigating complaints in Fiscal Year 1996-97. Over one-quarter of the cases opened by the Department in 1997-98 were transferred to the corporation for completion.

<sup>4</sup> This is the measure of timeliness proposed by the department for performance-based program budgeting.

**Exhibit 1**  
**The Corporation Reported More Externally Initiated Complaints Against Licensees to the Probable Cause Panel in a Timely Manner Than the Department Formerly Had Done**

	Percentage and Number of Legally Sufficient Complaints Processed	
	Department FY 1996-97 <sup>1</sup>	Corporation FY 1998-99
6 months	30% (10)	40% (26)
9 months	27% (9)	32% (21)
12 months	24% (8)	15% (10)
Over 12 months	18% (6)	3% (2)
Open cases, not determined		9% (6) <sup>2</sup>
<b>Total</b>	<b>33</b>	<b>65</b>

<sup>1</sup> Complaints filed during Fiscal Year 1997-98 were handled by a combination of department and corporation staff. As a result, we were not able to attribute performance to either entity.

<sup>2</sup> These cases remain open. At February 4, 2000, three cases were open for more than nine months; an additional three cases were open for more than six months

Source: Department of Business and Professional Regulation and the Florida Engineers Management Corporation.

***The corporation took greater steps to ensure that engineers complied with the terms of their discipline***

Another important responsibility of regulatory entities is to have a system to ensure compliance with disciplinary requirements, such as additional education, that are levied upon persons who violate professional standards. The corporation appears to have developed a reasonable compliance monitoring system. This represented a performance improvement, as no compliance monitoring system appears to have been in place when the department was responsible for compliance monitoring.

After receiving disciplinary files from the department, the corporation identified an initial 83 licensees who were not in compliance with the terms of their discipline. Forty-eight of these cases were determined to be legally sufficient. In comparison, only two such complaints were filed in the three previous years, when

the department had responsibility for monitoring imposed disciplinary actions.

**Exhibit 2**  
**The Corporation Investigated More Internally Initiated Legally Sufficient Complaints Against Licensees in Its First Full Year of Operation Than Had the Department**

	Percentage and Number of Legally Sufficient Complaints Processed	
	Department FY 1995-96 through 1997-98	Corporation FY 1998-99
6 months	2	63% (30)
9 months		27% (13)
12 months		6% (3)
Over 12 months		4% (2)
<b>Total</b>	<b>2</b>	<b>48</b>

Source: Department of Business and Professional Regulation and the Florida Engineers Management Corporation.

***Board members and engineers were satisfied with the corporation's performance***

Critical stakeholders appear to be satisfied with the corporation's performance and the results of the privatization effort. We interviewed members of the Board of Professional Engineers and the Board of the Florida Engineers Management Corporation to evaluate their satisfaction with corporation activities. The members of both boards indicated satisfaction with the corporation's performance. Board members specifically identified the publication of a quarterly newsletter, increased public access to board staff, and the timeliness with which complaints were referred to the probable cause panel as contributing to their satisfaction.

In addition, the Florida Engineers Management Corporation contracted for a customer satisfaction survey to evaluate their first year in operation. While only 58 of 483 engineers responding to the survey indicated that they had contact with the corporation, 57 of these 58 engineers reported a satisfactory experience.

## Performance Review

### *The increased performance of the Florida Engineers Management Corporation may be attributed to the specialization of board staff*

The Florida Engineers Management Corporation provides services to engineering licensees under a different organizational model than the department.

Under the department, the Board of Professional Engineers shared administrative services and staff with the Board of Professional Geologists, the Board of Landscape Architects, and the Board of Architecture and Interior Design. Investigative services were provided by a department unit that served the 20 entities under the department's jurisdiction, and investigators did not specialize in a specific licensing area. The department's central legal office provided legal services, with some specialization in specific licensing areas. In contrast, under the corporation, administrative, investigations, and prosecutorial staff provide services only to the engineering profession.

Both the board members of the Board of Professional Engineers and the President of the Florida Engineers Management Corporation asserted that staff specialization provided greater responsiveness. In addition to providing the expertise needed to process complex engineering complaints, it appears that the stand-alone model may allow more effective communication between corporation staff and improved responsiveness to the engineering public.

### *The cost of regulation has increased under privatization*

Regulatory costs have increased under the corporation. These costs must be compared over a multi-year period, as operating costs vary depending on whether license renewals occur during the year. Professional engineers are licensed for a two-year period, with all licenses renewed every other year. Renewal years thus

generate higher expenditures than non-renewal years due to the need to handle over 25,000 renewal applications. Fiscal Year 1998-99, the first full year of corporation's operations, was a renewal year.

The corporation's expenditures during the year were 11% higher than in Fiscal Year 1996-97, the prior renewal year administered by the department (see Exhibit 3). The department spent an additional \$80,000 to administer the contract with the corporation, resulting in an overall cost increase of \$247,467, or 16%. We did not evaluate the efficiency or cost-effectiveness of the department's method of oversight.

### Exhibit 3 The Cost of Regulating Engineers Has Increased by 16% Since Privatization

	Department FY 1996-97 <sup>1</sup>	Corporation FY 1998-99	Percentage Increase in Cost
Operational Expenditures	1,588,146	1,755,594	11% <sup>2</sup>
Contract Management			
<b>Total</b>	<b>1,588,146</b>	<b>1,835,613 <sup>3</sup></b>	<b>16%</b>

<sup>1</sup> Cost information for Fiscal Year 1997-98 could not be used, as both the department and the corporation handled many cases. In addition, it was not a renewal year.

<sup>2</sup> This does not consider the 3.05% increase in the consumer price index during this period.

<sup>3</sup> We did not include in our assessment the department's expenditures associated with an emergency order, in the amount of \$68,398, or the 7% general revenue assessment against all trust funds, in the amount of \$328,333.

Source: Department of Business and Professional Regulation.

## Further Privatization Raises Issues

During our review, we identified several issues that should be considered if privatization of additional professional boards is considered by the Legislature.

*Privatizing individual boards reduces the number of boards sharing the department's fixed costs, thus increasing regulation costs borne by the remaining boards*

The purpose of combining the regulation of several professions under one agency is to permit the economies of scale available when fixed costs are distributed over a larger number of boards.

The department provides centralized licensing, testing, investigations, and legal services to 19 regulating entities. As boards are privatized, the variable costs associated with each entity will be reduced. For example, the department was able to reduce staff by 11.5 positions with the creation of the corporation. However, the percentage by which the fixed portion of the department's costs would be reduced would likely be less than the percentage previously contributed by the privatized board.<sup>5</sup> As a result, the remaining professions must absorb these costs.

While it is expected that the department would continue to reduce any variable costs associated with the future privatization of any of the boards, as well as some portion of its fixed costs, the cumulative impact of the privatization of additional boards may be an increase in the costs allocated to each profession that remains under the department. Additional privatization, particularly if it occurs for a majority of the larger boards currently under the department's jurisdiction, could increase costs to the extent that some license fees could become prohibitive or services could need to be reduced to keep fees at a reasonable level.

*Creating separate licensee data systems is costly and diminishes the integrity of information for performance-based program budgeting*

Due to department concerns regarding data security, the Florida Engineering Management Corporation was required to establish a licensee data system separate from the department's centralized licensee database. The corporation incurred costs in excess of \$100,000 to develop this system. Data included in this information system will be provided to the department for inclusion in performance-based program budgeting (PB<sup>2</sup>).

The usefulness of PB<sup>2</sup> data depends on the reliability of the underlying data. The need to compile this data from multiple information systems increases both the risk of error and the necessary extensiveness of data testing.

If additional boards are privatized and required to develop stand-alone information systems, regulatory costs will likely be increased due to the need to create duplicate licensee data systems, and data accuracy could be compromised. The department should identify the actions that would be required and the costs that would be incurred to allow the privatized entities to interact with the department's centralized licensee data system. This would likely be preferable to the cost of developing multiple databases and would help ensure the accuracy of data needed for performance-based program budgeting.

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<sup>5</sup> Because the fixed costs remaining after the privatization of the Board of Professional Engineers were distributed over more than 19 regulating entities, the impact on any one profession would have been limited. However, if these costs had to be absorbed by fewer than 19 regulating entities, the impact would have been greater, particularly for those entities that regulate relatively few persons.

## Recommendations

### *Recommendations to the Legislature*

The Legislature should consider establishing performance expectations if additional regulatory boards are privatized, such as expected cost savings or performance improvements. The Legislature should also consider the cumulative impact of privatizing additional boards, which can increase the costs to the professions that remain under the department and could result in raising some professional license fees or reducing board services.

We recommend that the Legislature require any future proposals to privatize professional boards, include an analysis that

- provides baseline data, to include the costs and performance of the function under the state entity;
- identifies expected cost savings and service improvements anticipated to result through the privatization effort;
- quantifies the expected cost impact on professions remaining with the department; and
- identifies any reduction in the department's fixed costs that can be made to offset the increased allocations to individual boards.

### *Recommendations to the department*

The department should use expectations identified in a legislative analysis to establish performance-based contracts with the privatized entity. The department should also conduct a subsequent evaluation and comparison of the cost and performance of each entity before and after privatization, to include the impact of the privatization on the boards that remain under the department.

We also recommend that, prior to any additional privatization efforts, the department identify the actions that would be required and the costs that would be incurred to allow the privatized entities to interact with the department's centralized licensee data system. The creation of separate licensee data systems under privatization is costly and diminishes the integrity of information used for performance-based program budgeting.

Finally, the increased performance of the Florida Engineers Management Corporation may be attributed to the specialization of board staff. Therefore, we also recommend that the department determine whether the increased specialization of administrative, investigations, or prosecutorial staff could improve services to professions under its control.

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

*The Florida Monitor:* <http://www.oppaga.state.fl.us/>

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# Agency Responses

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## FLORIDA ENGINEERS MANAGEMENT CORPORATION

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March 15, 2000

Mr. John Turcotte, Director  
Office of Program Policy Analysis and  
Government Accountability  
111 West Madison Street, Room 312  
Tallahassee, Florida 32302

Dear Mr. Turcotte,

We are in receipt of the preliminary findings and recommendations of your performance review of the Florida Engineers Management Corporation and have reviewed them and found no substantive errors. We offer no response other than to compliment your staff for the professional manner in which the review was conducted.

Sincerely,



Dennis Barton, President

*Eugene Bechamps, P.E.*  
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*Charles E. Langbein, P.E.*  
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*Dennis Barton*  
PRESIDENT



## DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, Governor

Cynthia A. Henderson, Secretary

March 15, 2000

Mr. John Turcotte, Director  
Office of Program Policy Analysis  
and Government Accountability  
312 Claude Pepper Building  
Tallahassee, Florida 32304

Dear Mr. Turcotte:

Listed below are the Department's comments regarding OPPAGA's Draft Performance Review of the Florida Engineers Management Corporation (FEMC").

Page 2, right column: This section refers to the number of complaints processed and the timeliness in which the complaints were handled. The report states that FEMC received 100 complaints, a 22% increase over what the Department received. Neither FEMC nor the Department can predict with any certainty the number of complaints to be filed in any given year. The true measure would be on timeliness and success of prosecution, versus the number received.

A measure for the timeliness of complaints processed was proposed in the department's 2000-2001 Legislative Budget Request (page 90). Following recent discussions with legislative and OPPAGA staff, the department will now be tracking this measure as an internal measure. Data on this measure will be available in September 2000.

In terms of timeliness, the Department has implemented new procedures which have improved the response time. For the period July 1, 1999, through February 29, 2000, the average turn-around time for current complaints is 146.6 days or 4.8 months for the licensing authorities under Professions including CPAs. This includes every type of processed action.

Page 3, left column, last sentence that is completed on right-hand column: This sentence asserts that the Department did not have a compliance system in place. The Department did have a compliance system in place and monitoring of the final orders was done by the Board on an individual basis. However, the system used was manual and was not very effective because it did not allow for review of files on a regular basis. With the funding requested by the Department this year, technology will be in place for all professions.

Page 5, right column regarding the creation of separate licensee data systems: The Department is in the process of creating an enterprise-wide licensing information system that will be used by all regulatory entities. In the event that a Board is privatized in the future, they will not have to develop a stand-alone system. They will be required to use the State's enterprise licensing system.

Finally, the Department provides newsletters to its licensees, has increased public access and works more closely with its licensees than previously exercised. The website and improvements sought in technology will provide even better customer service.

Thank you for the opportunity to respond to OPPAGA's draft comments. If you have any questions or require additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be "Cynthia Henderson".

Cynthia Henderson  
Secretary

Office of the Secretary

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