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Final Analysis
Legislative Service Commission

Sub. S.B. 77

124th General Assembly
(As Passed by the General Assembly)

Sens. Coughlin, Amstutz, Armbruster, Robert Gardner, Mumper, Nein, Spada, Wachtmann

Reps. Williams, Kilbane, Collier, Rhine, Young, Lendrum, Wolpert, Flowers, Salerno, Schmidt, Carey, Calvert, Seitz, Willamowski, G. Smith, Gilb, Barrett, Buehrer, Perry, Widowfield

Effective date: *

ACT SUMMARY

- Abolishes the authority of the State Board of Registration for Professional Engineers and Surveyors to exercise discretion over whether firms, partnerships, associations, and limited liability companies have to obtain a certificate of authorization to provide professional engineering and professional surveying services and instead statutorily mandates that these business entities obtain such certificates.
- Abolishes statutorily specified requirements that corporations must satisfy in order to obtain a required certificate of authorization.
- Eliminates a requirement concerning the percentage of professional individuals that comprise and own firms, partnerships, associations, limited liability companies, and corporations that provide professional engineering and professional surveying services.
- Modifies filing requirements for firms, partnerships, associations, limited liability companies, and corporations that provide professional engineering and professional surveying services.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Indicates the intent of the General Assembly to reflect and accept the holding of the Franklin County Court of Common Pleas in *S.E.A., Inc. v. State Board of Registration for Professional Engineers and Surveyors* despite any amendments to the Professional Engineers and Professional Surveyors Law since June, 1988.
- Makes clarifying changes to the Professional Engineers and Professional Surveyors Law.

CONTENT AND OPERATION

Background

Prior law set forth various requirements to be satisfied in order for a firm, partnership, association, limited liability company, or corporation to provide professional engineering and professional surveying services. The act modified several preexisting requirements.

Certificates of authorization

Statutory requirement for firms, partnerships, associations, and limited liability companies

Prior law required a corporation to obtain a certificate of authorization from the State Board of Registration for Professional Engineers and Surveyors in order to provide professional engineering and professional surveying services in Ohio but did not specifically require firms, partnerships, associations, and limited liability companies to obtain a certificate. Instead, the prior law authorized the Board to, by rule, require a firm, partnership, association, or limited liability company not organized under the General Corporations Law (R.C. Chapter 1701.) or Professional Associations Law (R.C. Chapter 1785.) to obtain a certificate of authorization, and it prohibited those business entities from providing those services without holding a certificate if the Board mandated the holding of such certificates. Under administrative rules adopted pursuant to prior law, the Board required firms, partnerships, associations, and limited liability companies not organized under the General Corporations Law or Professional Associations Law to obtain a certificate of authorization.¹

The act abolishes the Board's authority to exercise discretion on this matter and instead statutorily mandates the holding of a certificate of authorization by

¹ OAC 4733-39-03.

firms, partnerships, associations, and limited liability companies. Thus, corporations, as under prior law, as well as these other business entities, per the act, now must obtain certificates of authorization pursuant to a statutory mandate. (Sec. 4733.16(B) and (F).)

Abolishing statutorily specified requirements that corporations must satisfy to obtain the required certificate of authorization

Prior law also established requirements for corporations to satisfy in order to obtain a certificate of authorization. A corporation desiring a certificate of authorization was required to file with the Board a copy of a certificate of good standing from the Secretary of State, a listing, on a form that the Board directed, of the names and addresses of all officers, directors, and shareholders of the corporation; the names and addresses of any individuals providing professional services on behalf of the corporation who were registered to practice professional engineering or professional surveying in Ohio; and any other information the Board required. If all requirements were met, the Board had the authority to issue a certificate of authorization to the corporation. Under prior law, no certificate of authorization was issued unless persons owning more than 50% of the corporation's shares and more than 50% of the interests in the corporation were professional engineers, professional surveyors, architects, or landscape architects, or a combination of those professions, who were registered in Ohio. Under prior law, any corporation that held a certificate of authorization and that otherwise met the requirements of the Professional Engineers and Professional Surveyors Law (R.C. Chapter 4733.) was allowed to be organized for any purposes for which corporations may be organized under the General Corporations Law and was not limited to the purposes of providing professional engineering, surveying, architectural, or landscape architectural services or any combination of those services.

The act abolishes the specific requirements and provisions described above relative to corporations and instead simply requires corporations, firms, partnerships, associations, and limited liability companies to obtain certificates from the Board. (Sec. 4733.16(B) and (F).)

Other requirements business entities must meet to provide professional engineering and professional surveying services

Professional composition and ownership interests

Prior law prohibited any firm, partnership, association, limited liability company, or corporation from providing or offering to provide engineering or surveying services in Ohio unless more than 50% of the partners, members, or shareholders, more than 50% of the directors in the case of a corporation or

professional association, and more than 50% of the managers in the case of a limited liability company the management of which was not reserved to its members, were professional engineers, professional surveyors, architects, or landscape architects, or a combination of those professions, who were registered in Ohio and who owned more than 50% of the interests in the firm, partnership, association, limited liability company, or corporation, unless the requirements of this provision and the law governing the incorporating of professional individuals and groups was satisfied with respect to any professional association, or unless the requirements of this provision and of the laws governing limited liability companies were satisfied with respect to a limited liability company.

The act eliminates these professional composition and ownership interest requirements. (Sec. 4733.16(D).)

Filing, information, and responsibility requirements

Each firm, partnership, association, limited liability company, or corporation was required by prior law to file annually with the Board the name and address of each partner, manager, officer, director, member, or shareholder, the name and address of all persons designated as being in responsible charge of the professional engineering or professional surveying activities and decisions, and any other information the Board required. If there was a change in any such person in the interval between filings, prior law required the change to be filed with the Board in the manner and within the time that the Board determined.

The act modifies this provision by specifying that only the name and address of all owners and persons designated as being in responsible charge must annually be filed, along with any other information the Board requires. The requirement to file changes in the interval is eliminated by the act. (Sec. 4733.16(E).)

Continuing law requires each firm, partnership, limited liability company, and corporation offering or providing professional engineering or surveying services to designate one or more partners, managers, members, officers, or directors, who are registered, as being in responsible charge of professional engineering and surveying activities and decisions. The act adds that these registered professionals also must be responsible for professional engineering and surveying activities and decisions. (Sec. 4733.16(E).)

Clarifying changes

Continuing law prohibits a firm, partnership, association, limited liability company, or corporation, except a corporation that was granted a charter prior to August 7, 1943, or that was otherwise lawfully providing engineering services

prior to November 15, 1982, from providing engineering or surveying services, from holding itself out to the public as providing engineering or surveying services, and from using a name including one or more of the words "engineer," "engineering," "surveyor," or "surveying," or any modification or derivation of those words, unless the firm, partnership, association, limited liability company, or corporation files all information as required with the Board and otherwise complies with all requirements of the Professional Engineers and Professional Surveyors Law.²

The act clarifies that this prohibition and its exceptions apply with respect to *professional* engineering and *professional* surveying services. Additionally, the act specifies that the exemption for specified corporations described above applies to the corporations that meet the specified conditions already contained in existing law and adds an additional condition that they be providing those services specifically *in Ohio*. (Sec. 4733.16(B).)

S.E.A., Inc. v. State Board of Registration for Professional Engineers and Surveyors (Franklin Cty. C.P., June 2, 1988)

The act specifies that in amending Chapter 4733. of the Revised Code in this act and in all previous acts of the General Assembly from June 2, 1988, through the act's effective date, it is the intent of the General Assembly to reflect and accept the holding of the Franklin County Court of Common Pleas in *S.E.A., Inc. v. State Board of Registration for Professional Engineers and Surveyors* (Franklin Cty. C.P., June 2, 1988), No. 86CV-05-2754, unreported, that Chapter 4733. of the Revised Code does not apply to the business activities of the firms or their successors as described in that case. The Franklin County Court of Common Pleas held the following in *S.E.A.*:

(1) Systems Engineering Associates (S.E.A.) is awarded declaratory and permanent injunctive relief to the effect that R.C. Chapter 4733. does not apply to the business of S.E.A.;

(2) The Board is enjoined from attempting to apply R.C. Chapter 4733. *as currently enacted* to the business activities of S.E.A. (emphasis added);

(3) The Board cannot apply the March, 1983, amendment to R.C. section 4733.16(B) to the partnership S.E.A. and the Court permanently enjoins the Board from attempting to apply that statute to S.E.A. (the amendment prohibits a

² A nonprofit membership corporation, however, may use a name including one or more of the words "engineer," "engineering," "surveyor," or "surveying," or any modification or derivation of those words without complying with this provision.

business from using "engineering" in its business name unless it meets specified criteria).

The effect of this intention clause is uncertain.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-21-01	p. 235
Reported, S. Insurance, Commerce, & Labor	05-15-01	pp. 368-369
Passed Senate (32-0)	05-15-01	pp. 371-372
Reported, H. Commerce & Labor	06-20-01	pp. 701-702
Passed House (95-0)	06-28-01	pp. 770-771
Concurrence	06-28-01	p. 790

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