



Jon P. Honeck

Bill Analysis
Legislative Service Commission

Sub. S.B. 77

124th General Assembly
(As Passed by the Senate)

Sens. Coughlin, Amstutz, Armbruster, R.A. Gardner, Mumper, Nein, Spada, Wachtmann

BILL 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 must obtain a certificate of authorization to provide professional engineering and professional surveying services and instead statutorily mandates that such business entities must 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.
- 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

Existing law specifies various requirements that must be satisfied in order for a firm, partnership, association, limited liability company, or corporation to provide professional engineering and professional surveying services. The bill modifies several existing requirements.

Certificates of authorization

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

Current law requires 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 does not specifically require firms, partnerships, associations, and limited liability companies to obtain a certificate. Instead, the law authorizes the Board to, by rule, require a firm, partnership, association, or limited liability company that is 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 prohibits those business entities from providing those services without holding a certificate if the Board does mandate the holding of such certificates. Currently, under administrative rule, the Board requires firms, partnerships, associations, and limited liability companies that are not organized under the General Corporations Law or Professional Associations Law to obtain a certificate of authorization.¹

The bill abolishes the Board's authority to exercise discretion on this matter and instead statutorily mandates the holding of a certificate of authorization by firms, partnerships, associations, and limited liability companies. Thus, corporations, as under existing law, as well as these other business entities, per the bill, would have to 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

Current law also establishes requirements corporations must satisfy to obtain a certificate of authorization. A corporation desiring a certificate of

¹ OAC 4733-39-03.

authorization must 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 directs, 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 are registered to practice professional engineering or professional surveying in Ohio; and any other information the Board requires. If all requirements are met, the Board may issue a certificate of authorization to the corporation. No certificate of authorization can be issued under existing law unless persons owning more than 50% of the corporation's shares and more than 50% of the interests in the corporation are professional engineers, professional surveyors, architects, or landscape architects, or a combination of those professions, who are registered in Ohio. Under current law, any corporation that holds a certificate of authorization and that otherwise meets the requirements of the Professional Engineers and Professional Surveyors Law (R.C. Chapter 4733.) may be organized for any purposes for which corporations may be organized under the General Corporations Law and is not limited to the purposes of providing professional engineering, surveying, architectural, or landscape architectural services or any combination of those services.

The bill abolishes these specific requirements and provisions described above relative to corporations and instead simply specifies that corporations, firms, partnerships, associations, and limited liability companies must 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

Existing law further specifies that no firm, partnership, association, limited liability company, or corporation can provide or offer 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 is not reserved to its members, are professional engineers, professional surveyors, architects, or landscape architects, or a combination of those professions, who are registered in Ohio and who own 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 is satisfied with respect to any professional association, or unless the requirements of this provision and of the laws governing limited liability companies are satisfied with respect to a limited liability company.

The bill 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 is required by existing 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 may require. If there is a change in any such person in the interval between filings, current law requires that the change be filed with the Board in the manner and within the time that the Board determines.

The bill 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 bill. (Sec. 4733.16(E).)

Existing 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 bill adds that these registered professionals also must be responsible for professional engineering and surveying activities and decisions. (Sec. 4733.16(E).)

Clarifying changes

Current 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 bill clarifies that this prohibition and its exceptions apply with respect to *professional* engineering and *professional* surveying services. Additionally, the bill 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 bill specifies that in amending Chapter 4733. of the Revised Code in this bill and in all previous acts of the General Assembly from June 2, 1988, through the bill'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 business from using "engineering" in its business name unless it meets specified criteria).

The effect of this intention clause is uncertain.

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.

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

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