

CORPORATE GOVERNANCE: THE ISSUE OF DEREGULATING OWNERSHIP IN NEW YORK STATE

The American Council of Engineering Companies of New York (ACEC New York), an organization representing over 240 firms totaling more than 15,000 employees in New York State, is aggressively seeking passage of a New York State corporate governance bill. Designed to improve the vitality and competitiveness of New York's consulting engineering industry at no cost to taxpayers, the bill as sponsored by Senator LaValle (S3226) and Assemblyman Canestrari (A6787), would amend New York's business corporation law to allow for the formation of design professional service corporations.

New York's business corporation law currently restricts ownership in professional corporations (PC's) and professional limited liability corporations (PLLC's) to licensed professionals. In a design professional service corporation, as defined in the corporate governance legislation, non-licensed professional employees would be allowed a non-majority share (less than 25%) of ownership in the firm.

Among the benefits associated with deregulated ownership are:

- Improved recruiting capabilities – offering potential employees the benefit of ownership helps attract top talent.
- Employee motivation – by granting ownership opportunities to every member of a company, it seems logical that overall motivation and dedication would increase because everyone would be allowed to share directly in the company's success, thus encouraging employees to perform better.
- Enhanced competitiveness – when a company's recruiting abilities are improved (thus attracting better talent), and when employees perform better, a company is better positioned to compete in today's global marketplace.

There are those who stand firm that corporate governance poses a threat to the safety of the public. This argument cites that a non-licensed owner could potentially force licensed subordinates to breach their professional ethic for the sake of continued employment. However, the new corporate governance bill has taken this into account by incorporating the following safeguards:

- A minimum of 75 percent of firm ownership remains in the control of licensed professionals.
- The ownership percentage of a non-licensed professional is also limited to that of the highest licensed professional in a given firm.
- A minimum of 75 percent of Board of Director seats are restricted to licensed professionals.
- The president, chief executive officer, and chairman of the board of directors must be licensed professionals.

The concept of non-licensed ownership of engineering firms has already proven to be successful. Through the existence of a grandfather clause that is exclusive to the engineering profession, approximately one hundred engineering firms are currently registered as New York corporations that operate without ownership restrictions, and with a lack of personal liability on the part of their shareholders. These grandfathered firms include many of the largest and most respected firms in the consulting engineering industry.

Most professional engineers, including members of ACEC New York and the New York Society of Professional Engineers (representing the interests of New York's professional engineers in public and private practice), agree that the corporate governance bill is legislation that should be passed. They feel it will greatly benefit the industry, and enhance a firm's ability to succeed in today's global marketplace.

The American Council of Engineering Companies of New York

ACEC New York is the leading advocate for New York State's consulting engineering community, striving to enhance the business practices of professional engineering companies in the planning, design and construction industry. Founded in 1921, ACEC New York presently consists of over 240 private engineering firms employing more than 100,000 people worldwide.

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