



The case for deregulated ownership in New York

November 19, 2007 - Spotlights

The American Council of Engineering Companies of New York (ACEC New York), an organization representing 240 firms totaling over 100,000 employees worldwide, 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 introduced by Senator LaValle (S930) and Assemblyman Canestrari (A2060), would amend New York's business corporation law to allow for the formation of design professional service corporations. It is an idea whose implementation is long overdue.

New York's business corporation law currently restricts ownership in professional corporations (PCs) and professional limited liability corporations (PLLCs) 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.

Enhances recruiting capabilities

Deregulating ownership of PC and PLLC firms offers many advantages, but perhaps the most significant is increased competitiveness. In this global marketplace, attracting the brightest and best talent is paramount to the survival and continued growth of any professional service organization. Nationally, all but a handful of states allow some percentage of non-professional ownership in professional corporations. This lack of flexibility in New York State hampers our ability to recruit and retain topnotch staff for certain key positions, since these people cannot be offered the benefit of ownership.

Motivates all employees

Additionally, the motivation of all employees within a company is enhanced when ownership restrictions are deregulated. The staff of a typical consulting engineering firm contains any number of non-licensed professionals, including scientists, business managers, planners, marketing personnel, technicians, etc. These employees, while making significant contributions to the success of their firms, are denied the opportunity to share in that success under the current system. Sound management principles would dictate that the motivation of even the most dedicated employee might suffer without fair and equal treatment in an area as significant as firm ownership. When dedication and motivation increase, a company's performance increases - as does the company's ability to compete in the global marketplace.

Safeguards ensure professionalism

A naysayer to the bill might argue that the public protection afforded by the current business corporation law will be compromised, citing the potential for a non-licensed owner to force licensed

subordinates to breach their professional ethic for the sake of their continued employment - an act that could jeopardize public safety. However, the new corporate governance bill has taken this into account by incorporating the following safeguards:

- * A minimum of 75% of firm ownership remains in the control of licensed professionals.
- * The ownership percentage of a non-licensed professional is limited to that of the highest licensed professional in a given firm.
- * A minimum of 75% 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.

Affirms historical precedent

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. It's no surprise that the list of New York's grandfathered firms includes many of the largest and most respected firms in the consulting engineering industry. Clearly, non-licensed ownership leads to improved competitiveness, and contributes to a firm's long-term success.

The people who live, work, and understand the engineering business - including the 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) - are in agreement that the corporate governance bill is good legislation. It's clear to all of us that by passing this bill, New York's engineering industry will benefit tremendously. Perhaps of greatest merit is the idea that in a time of economic uncertainty, when workload is declining due to lack of sustained infrastructure spending by the state, our engineering firms will be able to entice new and existing talent with the rewards of ownership. If we are able to do this, ultimately we will be able to better compete - and even prosper - in today's global marketplace.

Robert Radley, P.E., is president of FRA Engineering, P.C., and chairman of the ACEC New York legislative committee.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540