April 29, 2013

Representative William E. “Bill” Sandifer, III
Chairman
House Labor, Commerce, and Industry Committee
407 Blatt Building
Columbia, SC 29201

Dear Chairman Sandifer and Representatives:

The South Carolina Board of Registration for Professional Engineers and Professional Surveyors (“Board”) has met and considered Bill H. 4038, which would add a broad exemption to Section 40-22-280(A) of the Engineers and Surveyors Practice Act. This Board has voted unanimously to oppose H. 4038 for the reasons as stated in this letter. Furthermore, the Board would like to voice its disappointment and disbelief that the Bill has been passed through without an opportunity to speak to your membership directly in subcommittee.

There are four key reasons the Board opposes H. 4038:

1. First and foremost, this bill flies in the face of the very purpose of the Board—“to protect the health, safety, and welfare of South Carolina’s citizens.” S.C. Code Ann. § 40-22-2 (1976, as amended).
2. Secondly, the statute already provides in S.C. Code Ann. § 40-22-260 for temporary licensure if necessary in a very timely manner.
3. Third, for the “one person holding a certificate of registration,” this Bill would ultimately lead to certain violations of the professional rules of ethics for the licensed person.
4. Fourth, the overly broad and undefined term “affiliate” leads to a never-ending tree of businesses and associates that could be tied back to one corporation and one licensed person.

The crucial and essential function the Board provides in upholding its statutory purpose is public protection through supporting “licensure as the basis for accountability,” S.C. Code Ann. § 40-22-2. Other states have experienced recent catastrophes where a loophole allowed for an individual (or individuals within a corporation) not appropriately licensed to provide services in certain circumstances, such as the BP Oil Rig explosion in

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The crucial and essential function the Board provides in upholding its statutory purpose is public protection through supporting “licensure as the basis for accountability,” S.C. Code Ann. § 40-22-2. Other states have experienced recent catastrophes where a loophole allowed for an individual (or individuals within a corporation) not appropriately licensed to provide services in certain circumstances, such as the BP Oil Rig explosion in
the Gulf of Mexico and the West Virginia mining disasters. In each of those cases, a state-licensed professional engineer was not required because of statutory exemptions. While the Gulf States changed their statutes in the intervening years, West Virginia’s statutes still have an exemption for a design professional for mining. Although H. 4038 does provide the exemption is limited to services for business purposes, the citizens affected by the “general business” are still South Carolina citizens that our Board endeavors to protect.

As the Board understands it, this piece of legislation is geared towards out-of-state corporations that need to be able to get a specialty discipline to a site quickly for highly technical professional services. In that situation, the professional could be granted temporary licensure under S.C. Code Ann. § 40-22-260. Under this statute a temporary licensure can be granted very quickly. If a specialty engineer or surveyor is needed to provide particular services for a corporation, whether that individual is employed by the actual corporation or an “affiliate,” the engineer or surveyor could apply for and be granted temporary licensure for up to one year for one project.

Third, for the “one person holding a certificate of registration,” this Bill would ultimately lead to violations of the professional rules of ethics for the licensed person. As stated in S.C. Code of Regulations R. 49-302, Engineers and Surveyors shall only perform assignments when qualified by education or experience in the specific technical field of professional engineering or surveying involved. The Engineer or Surveyor may accept assignments requiring education or experience outside their field of competence, but only to phases of the project where he or she is qualified. Furthermore, the Engineer or Surveyor shall not affix his or her signature or seal to any engineering or surveying plan, or document dealing with subject matter where he or she lacks competence nor to any such plan or document not prepared under his direct supervisory control. If a corporation had only one licensed individual employed, the licensed individual would be set up to violate the Code of Ethics, as surely one licensed individual could not attest to the work of various competency areas or, if engineers and surveyors were employed, potentially in a wholly different profession or branch of engineering.

H. 4038 also extends the loophole for not just employees of a corporation, but “one of the corporation’s affiliates.” “Affiliate” is a broad and undefined term that throws the door wide open to any type of “affiliate” – person, company, or otherwise, that is connected to or associated with the corporation. It requires no formal contract. It may not even require a verbal agreement. This extends the use of this exemption so far that it is unfathomable how far the roots of this never-ending tree could reach. Feasibly, anyone or any business showing a loose association to the “corporation” in question could provide unlicensed engineering or surveying services without recourse as long as the corporation employs one individual licensed in the state. H. 4038, as currently written, does not give consideration to the particular discipline of engineering in which the “one person” has expertise.
Feasibly, an individual whose expertise is in electrical engineering could design a building (or other structure or entity) in which thousands of South Carolina citizens would work. To expand that example, affiliates whose engineering work is unrelated to electrical fields would fall under the umbrella exemption.

We, the Board of Engineers and Surveyors, endeavor to uphold our purpose to protect the health, safety and welfare of the general public. While we welcome any company to enter our State and conduct business and employ our citizens, our duties are to make sure those companies are accountable for the health, safety and welfare of our citizens through appropriate licensure. We respectfully ask for the opportunity to provide public testimony on this subject from members of our profession in committee. We endeavor to transmit our views today through this letter, transparently, to the Representatives that have pledged to serve our State. We, like you, are here to serve the citizens of our State, and would be willing to work with you towards this goal. For these reasons, we respectfully ask that you reconsider H. 4038.

Respectfully Submitted:

Theresa H. Hodge, PE, Chair

Timothy W. Rickborn, PE, Vice-Chair

Dennis J. Fallon, Ph.D, PE, Secretary

Gene L. Dinkins, PE, PLS

John P. Johnson, PE, PLS

Miller L. Love, Jr., PE

Nancy W. Cottingham