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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

November 10, 2011

Mr. Michael Flury
Assistant Attorney General
Department of Legal Affairs
PL-01, The Capitol
Tallahassee, Florida 32399-1050

Re: Board of Professional Engineers Rule Sections 61G15-35.001 and 35.002

Dear Mr. Flury:

After reviewing the proposed amendments to Rule Sections 61G15-35.001 and 35.002, F.A.C., I offer the following comments and questions for your consideration and written response:

Notice The Notices of Proposed Rulemaking provide that a SERC was not prepared and that the rules will not require legislative ratification. However, the ratification language does not include a description of the other information expressly relied upon by the Board to reach that conclusion. See sec. 120.54(3)(a)1., Fla. Stat. Please publish a Notice of Correction for each rule that includes the required "statement as to whether, based on . . . other information expressly relied upon and described by the agency . . . , the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3)."

In addition, for both proposed repeals, the Purpose and Effect Statement, the Summary, and the Statement of Facts and Circumstances Justifying the Rule Proposal all say the same thing – that the Board plans to repeal this rule because it determined that it was no longer necessary. Each statement has a unique purpose that is not met by saying the same thing three times. The facts and circumstances justifying the repeal appear to be an executive order that required a rule review to identify rules that were no longer necessary, duplicative, or unnecessarily burdensome, and this rule was identified as no longer necessary because The purpose and effect of the proposed rule is to repeal a rule that is no longer

necessary. Finally, a summary of the proposed rule would repeat that a review of the rule revealed that it was no longer necessary, so it is being repealed.

Next, why are these rules no longer necessary, and why was this information not provided in the notices? Section 471.015(7), Florida Statutes, provides:

The board shall, by rule, establish qualifications for certification of licensees as special inspectors of threshold buildings, as defined in ss. 553.71 and 553.79, and shall compile a list of persons who are certified. A special inspector is not required to meet standards for certification other than those established by the board, and the fee owner of a threshold building may not be prohibited from selecting any person certified by the board to be a special inspector. The board shall develop minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector under s. 553.79.

Will the repeal of these rules affect the Board's compliance with this mandatory rulemaking requirement?

Finally, when the Notices of Correction are published to correct the ratification statement, please consider correcting the Purpose and Effect Statement or Summary to include the reason why the rules were determined to be no longer necessary.

If you have any questions, please let me know. Otherwise, I look forward to your response.

Sincerely,



Brian T. Moore
Chief Attorney