RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: N.C. BOARD OF ENGINEERS AND SURVEYORS

RULE CITATION: 21 NCAC 56 .0701

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Extend the period of review

COMMENT:

*In (e)(5) page 3 line 8 and (e)(6) line 10 it is not clear what is included in the term “licensee’s organization.” It is not clear whether this is restricted to the business entity under which the licensee is engaging in the practice of engineering or surveying or whether it expands to include professional societies, boards or memberships.*

*The ambiguity in (5) is not as difficult because it would seem to refer to the typical conflict of interest provisions applicable to all public servants. At the same time it might conflict with a licensee’s public duties and obligations as a member of that board. For example a licensed engineer sitting on the Board of Examiners for Engineers and Surveyors has an obligation to vote on rules affecting the services offered by all engineers and surveyors including the licensee. If he or she refrained from voting because of this rule, he or she would be violating the duties of the office.*

*On the other hand this provision could present numerous difficulties with interpretation in (e)(6). For instance if an engineer from the DOT also served on the board of a professional society with any given number of other engineers engaged in the private sector, are those other members of the board forbidden – or perhaps even ordinary “members” of the professional society – from soliciting or accepting DOT governmental contracts?*