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# MEMO



**DATE:** 05-15-09  
**TO:** NC-ASHI Board of Directors  
**FROM:** Bruce Rudd, NCAR Liaison  
**SUBJECT:** SUMMARY REPORT, RE:  
Home Inspection Legislative Initiative (S.B. 1007)

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My efforts along with John Guy, our Chapter President, toward negotiating effective legislative changes for the NC Home Inspection industry with representatives from other affected trade organizations is now basically complete. The proposed legislation is now in the hands of our State congress and out of our hands. Due to the heavy impact on our Chapter's delicate budget, we are attempting to curtail additional expenses from Lobbying costs. My only remaining work will be to answer questions and consult as needed.

This has been a unique, complicated, and very educational learning experience for me; and one that should be accurately documented for the benefit of the Chapter and for future negotiators. For that reason, I will walk you through the process from beginning to present, including the logic, strategy, reasoning, and conclusions involved. I apologize in advance for the necessary length of this report.

### HISTORY

On 02-05-09 Rick Zechini, Director of Governmental Affairs-NCAR, approached us and the NCLHIA through our respective lobbyists to request a meeting of all parties to discuss language that the NCAR wanted to see added to the H.I. Statutes. He had also invited Lisa Martin, NCHBA Representative, and encouraged all parties to bring any proposals that they may have as well. John Guy and I were designated to represent NC-ASHI and we began by instead trying to get direct meetings (without the lawyers) for two reasons: first to force direct recognition of our organization by NCAR, and second to avoid the cost of our lobbyist at a time when our treasury was weak. Fortunately, we failed in that attempt when all the other parties argued strongly in favor of the inclusion of Henry Jones (our lobbyist) because of his unique historical perspective gained from writing the original legislation and his impressive reasoning and negotiating skills. We agreed to include Henry who turned out to be an invaluable asset both for the above reasons and because all meetings were subsequently held at Henry's offices, giving us a comfortable historical and home field advantage. Lengthy group meetings were conducted on March 5, 12, and 19, 2009 lasting in total over 12 hours.

THE MEETINGS

NCLHIA sent Fred Herndon, Bob Scott and Gary Walker represented by Thomas Moore. NCAR was represented by their Rick Zechini and Cady Thomas. NCHBA was represented by their Lisa Martin who attended part of the first meeting only. NC-ASHI sent John Guy and me represented by Henry Jones. Each meeting began with a draft legislation proposal for consideration by the group with the second and third proposals very accurately rewritten based on agreements reached in the preceding meeting, primarily by Cady Thomas. By suggestion of Rick Zechini and agreement of all parties it was decided that group working papers (the draft proposals) should not be distributed to the various memberships because they could be easily misconstrued without the context of the discussions. Rather, general meeting summaries would be a more prudent alternative. All parties further agreed to respect the existing stated purpose of the H.I. legislation which is to protect the public, and to negotiate accordingly. In my opinion, all parties did just that, with the possible exception of NCHBA. I asked Rick Zechini directly what NCAR's intentions were. He informed the group that NCAR would, in any case, introduce proposed H.I. legislation this congressional session. He went on to say that the NCAR preference was to first obtain consensus on the legislation from the related Associations.

NC-ASHI STRATEGY

John and I (with input from the Board of Directors) carefully evaluated the possible outcomes of the meetings with the goal of identifying the favorable outcomes for NC-ASHI and then planning our participation to achieve those favorable outcomes. We first agreed that NCAR should be encouraged and if possible rewarded for their first ever attempt to consult with us prior to taking actions that impact us. Second, we acknowledged that legislation would be introduced with or without our input and that we would have little or no control of it once it reached the legislature. Therefore, the prudent action was to try to construct the most palatable proposal possible and then to support it in hopes that widespread support would be the best defense against tampering while in the legislature. Third, we agreed that, even though we would have little control of the legislation, we should capitalize on the face to face opportunity to exhibit to the NCAR the differences in education and experience between the Home Inspector trade associations. All of these goals were dependant on first determining what grievances (real or perceived) were motivating NCAR to involve itself in the Statutes of a different profession. It should be noted that the alternative of opposing the legislative changes was also considered and discarded for several reasons, the most compelling of which was the need to put our differences with NCAR to bed for the simple reason that we can't afford the cost to our treasury of continuing to fight with them. We also acknowledged that the comparative stature of our membership would allow us to be more accepting of their proposals than the NCLHIA, so that if obstruction became necessary then that task would be handled by them.

NCAR GRIEVANCES

Let me preface this section by saying that we concluded that it didn't matter if the complaints were significant or not. It only mattered that the NCAR believed that they were. We have spent years trying to convince them by surveys and statistics that they don't really have significant complaints – just anecdotes. Those efforts have always and will always fall on deaf ears so are not worth pursuing. It is necessary to deal with their perceived problems without addressing the validity.

Through some pretty persistent questioning, John and I tried to determine what the NCAR complaints were. We could tell that their initial draft proposal was trying to address specific issues, but their attempts were clumsy and in some cases detrimental. We thought that by knowing their goals we could find more acceptable ways to accomplish them. Their first and primary complaint was Realtors® being held responsible for the actions of Home Inspectors (damage and/or mistakes) because the inspectors either couldn't or wouldn't be responsible for themselves. We found that to be a very legitimate concern. Second, they believed that if the summary page could be more prescriptive, then unnecessary confusion and ill-defined but alarming complications could be avoided. We found no fault with that goal either, provided inspectors could tell their clients what they considered to be the important things (regardless of category) on the summary page. Third, they wanted inspections to be more consistent from inspector to inspector (commonality in what most inspectors considered to be significant), and wanted better and more uniform inspector education to accomplish that goal. We recognized that this was the actual intention of their push for standard report forms, and that education was a much more attractive and meaningful method of achieving the goal than was standard report forms. For that reason, we also considered this to be a worthwhile goal. And fourth, they (and even more so the NCHBA) had complaints about the vague nature of inspectors calling Code. Although we didn't want to give up that option for home inspectors, we did agree that the option should be used responsibly.

These were the four main issues. As you review the resulting proposed legislation, you will note that virtually all changes address these four topics. There are other minor changes which we considered to be primarily "housekeeping". We examined each of them for the possibility of an unexpected negative impact, and found none. It is necessary to examine each of the four main issues to understand the consequent development of S.B. 1007.

#1 HOME INSPECTOR RESPONSIBILITY

The legislative proposals to address this issue are primarily found in 143-151.51(b). The initial NCAR draft from the first meeting addressed this concern by requiring \$25,000. – \$50,000. In a surety bond and by forbidding a limit of liability statement in the pre-inspection contract. The H.I. associations pointed out that there is no such bond available, that the amounts were inconsistent with other trades (i.e. \$17,500 for G.C.'s), and that most E & O carriers require a limit of liability statement. We acknowledged the need for increased responsibility requirements since the current \$5,000 - \$10,000 requirement was woefully

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lacking, and we acknowledged the sensitivity of the legislature to requirements that could appear to be barriers to entry of the profession. We suggested as an alternative, general

liability insurance because of its reasonable cost, its established precedent in six surrounding states, and its inherent protection of both buyers and sellers (the public). This took care of damage and injury concerns but we agreed that the NCAR still needed some additional responsibility protection from home inspectors designed to cover mistakes and oversights. We were hesitant to require E. & O. insurance because of its expense, so we made it one of three options including either net assets or a bond. With this two part requirement, home inspectors would be fairly proven to be responsible for their actions, and no barrier to entry would be created.

## #2 SUMMARY PAGE

The legislative proposals to address this concern are found primarily at 143-151.58(a1). This one was difficult and is easily misunderstood. The difficulty was not the result of disagreement of the parties as much as the need for very careful language to serve the purpose while protecting home inspectors. Resolution of this issue actually continued in good faith beyond the meetings and the introduction of the bill, which unfortunately resulted in the incorrect assumption by many that there was tampering. The core of the NCAR complaint was that the “adversely affects the habitability” wording in the Board Rule gave carte blanche to inspectors to include anything they wanted to in the summary, so their first draft proposal eliminated that language. Also, (and this is the part that came up later) they wondered if the language concerning further evaluation could be tightened up to be more prescriptive and defined. We agreed that the “adversely affects the habitability” language was excessively vague and impossible to define; but we pointed out that it was a home inspector’s only pathway to present important (although not necessarily defective) safety information to our clients. We agreed that the vague language could be eliminated as long as another pathway was provided for this important consumer information. NCAR showed immediate understanding of the issue and agreed that they also wanted this type of information included in the summary. They suggested an additional summary page item worded, “(shall include) any system or component that endangers the safety of the inhabitants.” We appreciated but rejected their offer based on the fact that home inspectors are liable not only for what is on the summary page but also for whatever is not on the summary page. Their well intentioned proposed language could make an inspector responsible for reporting every possible safety improvement available. For that reason and at our request, the language was changed to, “may also describe any system or component that poses a safety concern.” The vague language, ‘adversely affects the habitability of the dwelling’ was eliminated to the benefit of all.

After the meetings and introduction of the legislation, Rick Zechini reviewed the package in light of NCAR’s desire to make the summary page more prescriptive. He recognized that the “further investigate” language could also be easily misused as a catch all for inspectors who were unsure about an issue for no good reason or who used the language as a general C.Y.A. dump. He did not change the proposed legislation; rather he contacted us and NCLHIA for opinions and suggestions on the issue. We recognized both that the language could be and is sometimes abused, and that such language was necessary because of home inspectors limitations from being generalists and limitations of access, weather conditions, and

non-destructive techniques. The question then was, what do legitimate uses of the language have in common? The answer we came to was that legitimate use depended on the home inspector observing something suspicious but not confirmable under his constraints. For that reason, I suggested, "some documented visible evidence" as the needed qualifier to keep the option while preventing abuse. My suggestion was adopted and then the proposed legislation was changed. Again, it is important to remember that inspectors can be held responsible for summary page deletions as well as inclusions, so the prescriptive approach desired by NCAR is actually also protection for the home inspector.

**#3 EDUCATION**

The legislative proposals to address this concern are found primarily at 143-152.51 (a)(5) & (c). The NCAR concern here was the disparity from inspector to inspector about what issues were significant. It resulted in no uniformity or method for them to anticipate the issues that they would ultimately have to address. They had previously and incorrectly attempted to deal with this concern by pushing for standardized report forms, not realizing that they were attacking the only real sacred cow of the inspection industry. They finally realized that the alternative method of relieving this concern was more comprehensive and uniform education of home inspectors. To facilitate that, they merely needed to incorporate the Licensing Board's own educational initiative, which they did. Surprisingly, the abbreviated education program for existing home inspectors was not NCAR's idea – it was mine. We agreed that home inspector education was spotty at best, with all of us historically hustling whatever knowledge we could from diverse sources. We also agreed that the associate program was not a viable alternative for entry into the profession, although it was the only alternative to a G.C. I don't think that anyone disagrees that uniform and comprehensive education for home inspectors is a good thing for the industry. ASHI National has developed a model State home inspection legislative program which includes a grandfather clause. The NC-ASHI membership can easily meet the grandfathering requirements, so imposing education requirements for existing home inspectors does not impose a hardship on NC-ASHI members, the group I represented. For this reason, I explained that addressing the educational needs of new inspectors was important, but it did not address the group (existing home inspectors) that would influence home inspections for the next several years. For any kind of short term relief, uniform and comprehensive education would be needed for existing home inspectors – hence, the abbreviated education program. Details of the grandfathering requirements were debated and ended up more stringent than I originally proposed, but still very achievable for the average ASHI member.

**#4 CODE**

NCAR and even more so NCHBA had serious concerns with Home Inspectors calling things Code issues in reports. NCHBA went so far as to state that even their own members (G.C.'s) were not entitled to determine Code issues – only Code enforcement officials. We, and more emphatically NCLHIA, did not want to give up home inspector's ability to call Code issues, although we all agreed that it was a bad idea for an inspector to do so. I proposed the language from the S.C. home inspector legislation which allows inspectors to call code, but also imposes specific responsibilities to be accurate if they do so. Everyone agreed and the change is at 143-158.(a2).

MISCELLANEOUS

There are some other minor changes to the statutes in the proposed legislation – some insignificant and some helpful. In fairness, language was added to allow current associate licensees the option of finishing the associate program or switching to the new pre-licensing education program. More specific language and stronger requirements were added for inactive licensees to return to active status. Language was added to require licensees to report felony and misdemeanor convictions to the Licensing Board. When it was discovered that some people sat for the licensing exam every time it was offered but never passed, language was added to prevent taking the exam more than twice per year. Licensees entering the profession through the Contractor, Engineer, or Architect method would have to remain “in good standing” in their entry profession. In other words, they could not drop their entry profession licensing after achieving their home inspector license. And those entering by the above method have to wait six months between their two licenses. The requirement to be a high school graduate is currently deleted; however, it is not clear whether that is an intentional deletion or a typographical error. In either case, a high school diploma is highly irrelevant to the skills needed of a home inspector with the possible exception of writing skills, so we do not consider it to be an important issue.

GENERAL CONTRACTOR EXCEPTION

This is an issue which is inadequately repaired by the proposed legislation, and one which has become the focus of much attention. A discussion of it is needed to understand why this needed repair is so lacking. The original draft proposal for the first meeting written entirely by NCAR firmly closed the G.C. back door, clearly indicating that they wanted it closed as did we. Lisa Martin of NCHBA was in attendance for what turned out to be the sole purpose of informing the group that if proposed legislation went forward with language closing the G.C. back door, then it would be quickly killed by the NCHBA. After her statement and with little discussion she left the meeting. Within one hour of her departure the proposed legislation crafted by the Licensing Board, which also closed the G.C. back door, died at the Department of Insurance. Was that a coincidence? – We didn’t think so. All negotiating parties believed that the NCHBA had the power and ability to do what they said. The questions then were why did they resist so strongly and were they really that powerful? As best I could determine, their resistance resulted from precedent. They had apparently never allowed any legislation to go forward which indicated that a G.C. was not qualified to do anything. Also, they liked the commonly used language that lumped them in the company of engineers and architects and did not want to be treated separately from them, as this proposal did. I discussed the power issue with Henry Jones because, contrary to my belief, NCHBA appeared to be more powerful than NCAR. Henry explained that power came from more than one source, and could result from money or image. NCAR was probably the most powerful in terms of money, but that was trumped by the NCHBA image. According to Henry, NCHBA has always been successful at portraying themselves as the epitome of the honest, hard working, blue collar guy in a pick-up truck – an image the legislature will not mess with! Proof of their power was provided by NCAR who, even though they wanted the back door closed, would not challenge the NCHBA. The only concession offered by NCHBA was the “in good standing” language, and then much later Henry, through his skilled negotiating, got the six month waiting period from Mike Carpenter who is apparently Lisa Martin’s boss.

The group was faced with going forward without proper resolution of the back door issue or closing the back door at the likely risk of the entire project. We (John & I) decided to go forward for several reasons: Statistics from the Licensing Board indicated that about 66% of home inspectors entered the profession through the G.C. back door, but that group accounted for only 40% of complaints – no evidence of detriment to the public. We reviewed the roster of candidates for the next Licensing Board exam and found that, although 17 of 19 were entering by the G.C. back door, only two had recent G.C. licenses which would indicate intentionally getting a G.C. for the purpose of entering the home inspection profession. We considered that current lack of a viable alternative to enter the profession may well have forced many to enter through the G.C. method, and that the viable pre-licensing education program in the proposed legislation would provide a good alternative. Our thought, supported by our own experience, was that even if the G.C. alternative was easier, it did not prepare a new licensee to perform a home inspection while the new education program would. The fact is that all new licensees want to have a successful business which means they must perform a first inspection in front of a first client and therefore have to know how. It is possible in our opinion that the G.C. back door could very well close itself in light of the new education option. Our other compelling reason was the wise council of Henry Jones who said, “don’t let the perfect be the enemy of the good.”

## CONCLUSIONS

The above fully describes, as well as my memory and notes are able, how the proposed legislation reached its current place and what it contains and why. The bottom line is that it is a thoughtful, carefully prepared document which answers many of the legitimate concerns of the NCAR while at the same time providing additional protections for home inspectors. Most important of all, it serves the public by providing them with better educated and more responsible Home Inspectors. The differences it creates for a competent, responsible home inspector will be so negligible as to be hardly noticed. So my conclusions have more to do with the parties and the climate than with the actual mild and inoffensive legislation proposal.

## NCAR

Rick Zechini and Cady Thomas proved to be honest, skilled, understanding, and reasonable negotiators who indicated throughout a sincere concern for the welfare of the public. There was never a single case of either of them changing or altering anything in the proposal without first discussing it with the group, and there is nothing in the legislation upon which we did not agree. I developed a firm respect for them both. Many will tell you and have told me that they simply conned us. You all know me and I flatly say that didn’t happen. Decide for yourselves. The most disappointing thing about the whole project to me as a person is the grossly unfair way that Rick Zechini has been constantly attacked from many directions for being sneaky or conniving over parts of the legislation that weren’t his to begin with – they were mine. We do not need to fear NCAR, but we do need to keep good communications open with them. Remember, they don’t understand that harmful and disruptive voices like George Gioiella are as offensive to us as to them, unless we tell them.

NCHBA

We all wish that NCHBA was more public minded and less personally minded, but they are not and clearly no one can make them change. They narrowly see their job as protection of their members and that's what they do. On the other hand, their minor concessions ( in good standing, six month waiting period) indicate a less than totally closed mind. In addition to the concessions, Fred Herndon has commitments from both NCHBA and NCAR to work with us on further changes if time and experience show more changes to be necessary. So although we can't make NCHBA change and certainly not on our time table, we can expect to be able to reason with them over time. For me, that's good enough for now.

NCLHIA

Under the reasonable and patient leadership of Fred Herndon, the NCLHIA proved to be a valuable negotiating partner. They approached the table differently than did we. John and I cleared our objectives and plans with our Board prior to the meetings in order to be able to act on the spot. NCLHIA on the other had planned to gather information to take back for internal discussions prior to action. I'm sure our quickness to act was as aggravating to them as their hesitation to act was to us. In the overall process it really made no difference. NCLHIA has been much more active in the necessary but tedious follow up work than have we, and I thank them for that as well. Both their lobbyist and ours told us in no uncertain terms how patently stupid it is in their opinion for our two organizations to present a divided front for our industry. I think that issue bears additional and serious study.

LICENSING BOARD

This group, although not involved in the direct negotiations, was the most disappointing to me of all. I honestly don't know why. We carefully kept them abreast of the negotiations throughout the process and since none of the negotiators was ever asked to appear before them to offer additional explanations, we thought that was sufficient. In light of the failure of their own legislative proposal, we thought they would appreciate a second chance to get their pre-education program. The best way I can describe their behavior throughout the process is very inconsistent – much like a Whack-A-Mole game at the fair. I became aware during the process that frustration with such behavior on previous occasions was the motivation for Rick Zechini taking this different approach with us. I won't speculate here on the reasons for their behavior, but I do conclude that carefully worded legislation is much safer for home inspectors than is reliance on Rules of the Board. In fairness to the negotiating team I would point out that wording in the abbreviated education program grandfathering clause was reworked several times for the sole purpose of alleviating administrative load on the Licensing Board.

HENRY JONES

John and I almost made a very serious mistake early on when we tried to avoid using Henry. His skill and knowledge were invaluable. We would have been totally lost without him. My advice to you, the Board, is to always budget for the contingency of needing Henry because there will be times when he is essential.

SUMMARY

This concludes my report on the proposed legislation. I would like to thank the Board of Directors for allowing me to participate on behalf of NC-ASHI. It has been an amazing learning experience for me. My parting comments have more to do with society than with the proposed legislation. The strong and widespread objections to it are very puzzling to me. The legislation is so innocuous that I don't understand the ability of so many to get overly excited by it. It just isn't that big a deal! The other and even more amazing phenomenon to me is the propensity of so many to misunderstand or misconstrue the language and then to immediately conclude that the whole thing is a deceptive trick designed to cheat them in some way. Why is it so much easier and more natural to assume deceit and deception than to seek clarification and understanding? It could be a comment on society.

Best Regards,

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Bruce Rudd