

**Mr. David Tamny**  
**Opponent Testimony before the House Commerce and Labor**  
**Committee HB 257-October 23, 2007**

Chairman Brinkman and members of the committee. I would like to thank you for the opportunity to give my opposing testimony regarding HB 257 and the licensure of home inspectors.

I have been a home inspector in the State of Ohio for 15 years and am also a registered architect in the state of Ohio, licensed termite inspector and licensed radon tester as well. In addition I was the founding president of the North Central Ohio Chapter of the American Society of Home Inspectors and am currently National Treasurer of the American Society of Home Inspectors headquartered in Chicago. In my national position I have met with many other home inspectors from other states and learned about both the successes and failures of home inspector regulation in other states. The consequences of such laws oftentimes take years to be understood. Currently 32 states are licensed and Ohio is in the position of actually being able to benefit by the experiences of others if we have the wisdom to apply such knowledge. Unfortunately the current bill before this committee fails in this regard.

A comprehensive feasibility study was undertaken by the Ohio Division of Real Estate and Professional Licensing funded by the Ohio Real Estate Education and Research Fund. This impetus of this study was the Ohio Association of Realtors, the largest real estate trade association in Ohio whose membership and financial resources overshadow those of the home inspection industry and our small association groups. It is clear from statements made by the JLC at association meetings that HB 257 is a reactionary move in response to the pressure exerted by the OAR. We have been told by the JLC that if we don't support this bill the Realtors will create a bill that will be far less inspector friendly.

Those outside the industry are often unaware of the conflict of interest that exists between the Real Estate Sales industry and the independent home inspector. Real Estate agents and brokers are commissioned sales people whose income depends upon the sale of a home. The independent home inspector is in a precarious situation oftentimes receiving referrals from agents yet having a duty to their client which may or may not buy a house based upon the evaluation of its physical condition. It is critically important that inspectors maintain this freedom to report to their clients without concern about whether the real estate agent's commission is in jeopardy.

The Realtor interest in licensing home inspectors goes much deeper than consumer protection to the desire to insure that a disciplinary arm is imposed outside of civil litigation to deal with home inspectors who may be writing bad reports. HB 257's proposal to place home inspectors directly under the Superintendent of the Division of Real Estate with no home inspector board creates a poorly thought out unworkable structure which compromises the independence of home inspectors creating both a real and perceived conflict of interest. In an effort to appease legislators who are against more government the bill dispenses with an independent board and places all

responsibility to deal with complaints under a hearing officer who is an attorney. The above referenced feasibility study clearly states on pg. 76 “While we agree that the last thing most governments and tax payers want is to establish another layer of bureaucracy, it appears that only by creating an independent board can the home inspection industry and its regulation advance effectively. The board should not serve only as an advisory council as in other states described in this report; instead it should be empowered to regulate the home inspection industry without influence from other state agencies such as the Real Estate Division. This independence is key to our earlier point that home inspectors and real estate agents should maintain a properly separated relationship”. The reality of what this bill proposes is that if a disgruntled real estate agent decides that they got a bad home inspection they will be able to file a complaint with the Division of Real Estate, an attorney with minimal knowledge about home inspections will be forced to wade through and investigate what could be a large amount of frivolous and unfounded complaints. A board with home inspector representation is far more equipped to protect the home inspector from an angry agent who files a complaint because the inspector killed his deal. Within the structure of the Ohio Division of Real Estate, real estate agents, appraisers and cemeteries all have a board to govern and represent their regulation. Why is it that home inspectors despite the clear recommendation of the feasibility study do not? None of the laws currently functioning in our neighboring states place authority for home inspectors under the Division of Real Estate.

The next area where HB 257 fails is in the area of education. The outlined argument that 8 hours of non-technical education is sufficient and that the market place will resolve the need for structured classroom training is woefully inadequate. The feasibility study on pg. 77 states “we recommend an education component of the regulation that is at least similar to what is required of real estate agents.” . Again it states “While short courses focus on exam preparation through memorization, the often fail to develop the analytical skills necessary to properly identify and evaluate buildings”. I believe the current requirement for real estate agents is 120 hours. The argument advanced by the JLC that an approved exam is solely capable of insuring competency simply does not have merit. The laws in our neighboring states of Indiana, Kentucky, and West Virginia all require 60 to 80 hours of education. The lack of an education component in Ohio would not permit reciprocity between Ohio and its neighbors thus affecting those Ohio inspectors in neighboring states who wish to practice across state lines.

Another component of the feasibility study which has not been addressed at all by HB 257 is the recommendation to restrict referrals of home inspectors by real estate agents. On pg. 78 it states “Because of our basic premise or the need to distance real estate agents and home inspectors, we recommend that any legislation regulating the industry include a clause prohibiting real estate agents from recommending a specific home inspector or group of home inspectors”. If the goal of any regulation on home inspectors is consumer protection the independence of home inspectors must be preserved.

There is a certain misconception that HB 257 is certification rather than licensing. This term was chosen because of the belief that a certification law is more palatable to legislators than licensing due to a smaller regulatory structure. The fact is that any law

which prohibits those from engaging in a specific occupation is a licensing law. A true certification law would prohibit the use of the term “state certified inspector” to those who have demonstrated the proper credentials to use that term. Uncertified inspectors may need to register with the state and could still perform home inspections but not under the title State Certified Inspector. In reality a true certification bill with high standards would probably go much further to truly meet the needs of Ohio than HB 257 as proposed would. HB 257 is merely a bad licensing law stripped of a proper administrative structure.

Many have argued that a model of regulation similar to our neighbor in Pennsylvania could serve as a model for Ohio. Pennsylvania has no licensing board and requires its inspectors to be a member of a national association of home inspectors requiring passage of a test and a minimum of 100 inspections. The argument is let the associations rather than the government enforce their own standards. Unfortunately this system simply does not work in reality. As a result there are now currently two proposed bills SB 359 and HB 1805 designed to replace the current law. Both bills have a licensing board and pre-licensing education requirements. Home inspection associations simply do not have the resources or the legal authority to conduct investigations and to effectively enforce complaints.

As legislators you have an obligation to the people of the state of Ohio not only to pass laws but to make sure that those laws will adequately address the needs of all parties affected. Tax payer dollars have been spent to perform an academic feasibility study of what represents good regulation. The truth is that few have read the report and the recommendations in the report have not been followed. Most home inspectors do not understand what is in HB 257 and its effects nor do they understand how to navigate our complex legislative structure. The question is not whether one supports the concept of regulation but whether HB 257 meets the needs of good legislation. The JLC has been approached numerous times by the North Central Ohio ASHI Chapter wanting to work out a true consensus solution. Their response has been that after the bill has been introduced anyone who has an interest can make their voice heard through the legislative process. In some respects our government is a pay to play system. Without dollars to retain expensive lobbyists it is difficult to have much of an influence on the process. It is truly my wish that this committee will not pass HB 257 without the input of those with legitimate concerns about the content and an effort to reach true consensus of the industry.