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# LEGISLATIVE & REGULATORY ISSUES FOR ROOF CONSULTANTS

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## INTRODUCTION

**This article will provide information related to the legislative and regulatory efforts being made on behalf of the Roof Consultants Institute (RCI) in various venues to promote the interests of its members. These efforts are consistent with overall goals and objectives of RCI as adopted by the Board of Directors during previous strategic planning sessions (Goal #3: Advocacy and Recognition). However, it should be pointed out that the wheels of politics move quite slowly, and RCI is only in**

**the beginning stages of this process. It will more than likely require several years of diligent effort, as well as the expenditure of a significant sum of RCI's budget for lobbying, conferences, etc., in order to achieve the Institute's goals. Meanwhile, it is important to continue in these efforts, and it is incumbent upon each member to be alert for opportunities that could advance the efforts of RCI and, if possible, notify Headquarters of these circumstances.**

### Background and History

It must be noted that these efforts have not been initiated in a vacuum. Not only does RCI believe that its professional members have a great deal to offer the industry, but in many ways we have become the target of interest (and sometimes consternation) by other groups and regulatory bodies. In a number of instances, these other entities have imposed themselves and their agenda on roof consultants with detrimental effect.

Other circumstances in related construction industry fields also have implications for RCI members. A few examples of these developments include the successful efforts of an Arizona contractors' association to obtain regulations requiring roof inspectors to be "licensed contractors." Guess who administers the examination and listing of roof inspectors? That's right—the contractors' association! An example of the fox watching the hen house?

A similar regulation was passed in Nevada that required those involved in roof design to also be licensed by the contractors' board. Fortunately, in each of these cases, RCI had alert and active professional members who recognized the potential implications of these efforts and took steps to allow RCI-affiliated professionals to fare better in these circumstances. In Nevada, we

were able to work with the state contractors' licensing board to establish a separate category for "roof consultant," which allows such individuals to legally perform roof inspections in that state. However, due to the political and numerical strength of the contractor organizations in each state, they are essentially running the show in these regions. In my opinion, RCI should have more say in what is going on here, but we've been out-gunned.

Another member has reported that the state of California has passed legislation requiring home inspectors to be licensed with the state as part of a "Professionals and Business Practices Act." Although not directly related to what we do, this development has significant implications for our members who perform rooftop inspections.

Other professional regulatory boards are also actively working in this area. There have been recent decisions by several state engineering boards (Texas, South Carolina, and North Carolina that I am aware of) that roof consulting may constitute the "practice of engineering." In these states, if they chose to pursue it, individuals could be prosecuted under existing engineering practice laws for unlawfully offering engineering services. These decisions emphasize the fact that the simple replacement of an existing roof with an identical roof assembly is

generally acceptable for a non-licensed individual, but that changing the roof assembly, dead load, slope, or drainage could cross the line. It should be noted that RCI members practicing in these states without architectural or engineering credentials should be careful when dealing with projects in which such “changes” are made and should enlist the services of a registered professional to assist with those types of projects.

There is by no means any consistency in the application of these regulations, since it is widely accepted that, in retrofit or re-roof situations, roofing contractors will regularly (and with impunity) remove existing roof systems, revise the drainage scheme on a building, and install a completely different roofing system than what previously existed. Rarely are there any outcries from the professional boards or any consequences arising from these “design” activities.

## Positive Happenings

Not all recent developments are negative, however. Several positive things have happened in the past few years as well. During development of the new South Florida Building Code, an RCI member was instrumental in assuring that Registered Roof Consultants (RRCs) are recognized as legitimate roofing design professionals and, in fact, requiring the involvement of an RRC in some cases. This was modeled after regulations that have been in existence in the Metro-Dade County Building Code requiring an RRC or an approved laboratory to perform certain field tests in anticipation of retrofit or replacement roof systems. They also required an RRC to perform certain calculations related to type and shingling of the underlayment or base sheet as well as for fastener spacing and arrangement. In addition, for several years now, solicitations by the General Services Administration (GSA), United States Postal Service, and military procurement offices have published listings in the *Commerce Business Daily* (CBD) requiring the successful design firm to have an RRC on staff.

Although not well distributed and relegated to “history” in some respects, there was also a memorandum from the American Institute of Architects (AIA) dated May 24, 1984, that recognized “roof consulting” as a specialty consultant similar to mechanical designers, structural engineers, etc. It encouraged AIA members to retain roof consultants on projects with special needs and conditions. Further movement is afoot in Oregon due to an RCI member who has been asked by the state code agency to assist in writing an ordinance for roofing “special inspectors,” which could perhaps utilize a modified program similar to our Registered Roof Observer (RRO) registration. During the 2001 RCI Convention in Baltimore, other members reported on similar opportunities in Missouri and California. From these examples, I think it is easy to recognize the fact that this is not a “static” field, and we would do well to monitor these developments as they happen, interject our perspective before action is taken wherever possible, and take an active role in their conclusions.

## A Model Law

Several years ago, as a member of the Board of Directors, I proposed that RCI pursue the development of a “model” law that could be utilized by individual state legislatures to develop regis-

tration laws pertaining to roof consultants. The proposed law would have allowed states to register roof consultants in one of three methods: [1] using established architectural or engineering boards, [2] by creating a separate board for roof consultants, or [3] by utilizing RCI as a registration clearinghouse. The RCI *Model Law* was modeled after a similar law promulgated by the National Council of Engineering Examiners and Surveyors (NCEES), which was then reviewed by appropriate legal counsel.

An attempt was made in 2000 to introduce the proposed *Model Law* for state registration of Roof Consultants into the Texas legislature. The member of the Texas legislature who had studied this issue on behalf of RCI, after conferring with architectural and construction industry associations, concluded that there would be “significant resistance” to this proposed bill and declined to sponsor it for the 2001 session. It was noted that there may still be avenues for introducing this legislation in other states, such as Florida, in the future. However, with each trade organization trying to protect its own turf, this course of action would definitely be an uphill climb with numerous entities serving as potential opposition. Nevertheless, as an RCI member, if you become aware of an opportunity in your state, we have “legislation” ready to go that may be utilized “as is” or modified for the particular situation in your state.

This course of action, if pursued, would perhaps require some strategic liaisons with other professional organizations to provide additional support. Several RCI members have suggested that RCI establish a Political Action Committee (PAC) to assist in funding and lobbying for such legislative issues on our behalf. Certainly, we would need to develop a “war chest” that is separate from the RCI Foundation and eventually begin the planning and sequencing of targeted introductions into various state legislatures. In each state, we would also need friendly insiders to assist in this endeavor and appropriate sponsors in each legislature.

## Alternative Approach

In contrast to this direct approach, the RCI Board of Directors has considered an alternative strategy that would attempt to establish recognition of the RCI registration programs by working with various building code bodies and the building inspection departments of local governing authorities. These efforts would attempt to capitalize upon the recognition already garnered by the RRC program with the procurement offices of United States military and postal facilities. In addition, we could try to springboard from the recognition provided within the South Florida Building Code and coordinate these efforts with other governing bodies. Similar to the opportunity mentioned above with the Oregon roofing “special inspectors,” I believe there will be a number of opportunities in the future for RCI to provide input to various code agencies, interject the possibility of RCI registration programs to be more widely utilized, and assist agencies in developing appropriate requirements within the industry for roof consultants.

In addition, RCI has had dialogue with representatives of Factory Mutual (FM) that would position us to provide the educational programs required to train and “certify” roof designers when FM ultimately implements its program to approve roofing

contractors and roofing designers. Obviously, these efforts by FM will run into some resistance from roofing contractors, particularly since most retrofit roof systems are designed by contractors. Nevertheless, RCI will be ready, willing, and able to step into the void required by this "regulation" program that will be imposed by the insurance companies.

## Other Issues

As roof consultants, we have undoubtedly run into "competition" (of sorts) by roofing manufacturers who provide "free" specifications and standard details that can be applied to any project. However, as we continue in a society very prone to litigation, many manufacturers will begin to re-evaluate the potential liability for roof design that could accrue from promotion of these guide specifications and details. How this service can be integrated into the industry without violating engineering practice acts or architectural design issues is yet to be fully resolved, but I think there could be a place for RCI in that.

The other issue that will have to be addressed is the standing of roof consultants who are associated with specific manufacturers and how that relationship can be reconciled with the RCI *Code of Ethics*. The RCI Board and members will have to determine if continued professional credentials will require a statement of independence and profession of acceptance of certain ethical canons.

Somewhat related to this are the "purchasing groups" that are cropping up in the industry. These programs pre-qualify and pre-approve certain roof systems and materials on a volume discount basis and treat roof design as a commodity such as office supplies and cases of motor oil. These types of programs raise serious questions regarding the "practicing without a license" issue, as well as how these commodity roof materials will perform on roofs with special conditions or design requirements.

As may be seen, there is a wide open field available to us for a variety of involvements (and entanglements). Some we will have to address head on, some we will have to "pass" on, and others will require deferred action or finesse dependent on luck or skill. Whatever we do must be consistent with our mission and purpose, as well as the goals and objectives we have set for ourselves. It will take time, a serious commitment of our resources, and more than a little luck to ultimately achieve these lofty aims.

## ABOUT THE AUTHOR

**Warren French** is the current President of RCI. He is a member of the Registration Committee and is RCI's liaison to the American Society of Civil Engineers and the Sealant, Waterproofing & Restoration Institute. He has written numerous technical articles published by ASTM. Mr. French is owner of French Engineering Inc., Houston, TX, and has 29 years of industry experience.



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