

INDIANA BUILDERS ASSOCIATION  
Legislative and Regulatory Report #5  
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## **NEWS/HIGHLIGHTS**

### **LOCAL HBAS AND IBA PUSH FIX HOUSING FIRST WITH MEMBERS OF CONGRESS AND SENATE**

This week several local HBAs and members organized meetings with U.S. Representatives Mark Souder, Steve Buyer, Dan Burton, and Mike Pence to make sure they understand the importance of including provisions from Fix Housing First in the economic stimulus package and IBA held meetings with staff from Senators Lugar and Bayh's office.

### **CONTACT YOUR SENATORS TODAY AND URGE THEM TO FIX HOUSING FIRST**

The Senate continues debate on the economic stimulus bill and urge you to contact them and ask them to include portions of Fix Housing First by calling (866) 924-NAHB (6242). For details on coalition, please visit [www.FixHousingFirst.com](http://www.FixHousingFirst.com).

Specifically, we are urging the full Senate to enhance the home buyer tax credit by:

- Extending its effective date until Dec. 31, 2009 in order to give it time to work
- Allowing home buyers to use the credit at closing.
- Increasing its dollar amount to at least \$10,000 in order to encourage buyers to get off the fence.
- Making the tax credit available to all home buyers.

NAHB is also advocating for below-market interest rates on 30-year fixed-rate mortgages for homes purchased in 2009 as a means of further stimulating housing demand.

### **SENATE APPROVES AMENDMENT TO FIX HOUSING FIRST**

The U.S. Senate recently approved an amendment to the economic stimulus package that would change the homebuyer tax credit. The amendment was offered by Senator Johnny Isakson (R-GA), with Senator Joe Lieberman (I-CT) as a co-sponsor that would extend and expand the home buyer tax credit. The details are as follows:

- A tax credit in the amount of \$15,000 or 10 percent of the purchase price (whichever is less), with the option to utilize all in one year or spread out over two years
- The tax credit is available to all purchases of any home from date of enactment for one full year
- Able to claim the credit against the 2008 tax return
- Buyers must occupy the homes for two years as their principle residence or face recapture
- Purchases of homes by investors are ineligible
- Sunsets the previous \$7,500 Housing Tax credit on the date of enactment

- The tax credit may be used in conjunction with the mortgage revenue bond and mortgage credit certificate programs (unlike the current \$7,500 credit)
- It will cost approximately \$20 billion over ten years

#### LEGISLATIVE LUNCH RAPIDLY APPROACHING, ARE YOU REGISTERED?

The Housing Indiana luncheon will be on Monday, February 23<sup>rd</sup> from 11:30 a.m. -1:00 p.m. This is a great opportunity to speak with legislators in the General Assembly about issues facing the construction industry. The luncheon is being held in conjunction with the IBA Annual Housing Conference and cost to attend is \$25. Contact IBA today to reserve your space by calling (800) 377-6334 or [Info@BuildIndiana.org](mailto:Info@BuildIndiana.org).

#### GOVERNMENT DELAYS NEW I-9 UNTIL APRIL 3

The U.S. Citizenship and Immigration Services recently announced that it will extend until April 3, 2009, the requirement that businesses begin using a new employment eligibility verification form. The revised I-9 will include several changes including:

- employers will no longer be able to accept expired documents to verify employees' work eligibility,
- List A documents –documents that serve as proof of both identity and eligibility to work in the U.S. –no longer include forms I-688 (temporary resident card) and I-688A and I-688B (outdated employment authorization cards), and
- Adds certain foreign passports to the acceptable List A documents.

#### STATE OFFERS REBATE FOR ENERGY EFFICIENT HVAC TECHNOLOGY

The Indiana Office of Energy Development (OED) is now offering \$250,000 in rebates for replacing an existing furnace, boiler, or water heater with an energy efficient unit in existing Indiana residences. Rebates range from \$250-\$400 and details on the program can be found at <http://www.in.gov/oed/2376.htm>. The program will run until program funding is exhausted or April 30, 2009, whichever comes first.

#### FINAL REPORT ISSUED BY STATE AGRICULTURE REGULATORY STRUCTURE TASK FORCE

The Indiana Agriculture Regulatory Structure Task Force that was commissioned in 2007 by Lt. Governor Becky Skillman to study the governmental structure of the 13 agencies, organizations and other government related functions that regulate agriculture recently issued their findings. Of note are recommendations 9 and 10 which deal with septic issues. For the full report, please visit [http://www.in.gov/lg/files/Ag\\_Reg\\_Task\\_Force\\_Final\\_Report010709.pdf](http://www.in.gov/lg/files/Ag_Reg_Task_Force_Final_Report010709.pdf).

#### MORTGAGE LOAN ACTIVITY DECREASES

On a seasonally adjusted basis, the pace of mortgage loan activity decreased 38.8 percent last week, according to the Mortgage Bankers Association. Overall, mortgage rates were down, with 30-year loans decreasing to 5.22 percent, from 5.24 percent, and 15-year mortgages averaging 4.98 percent, a decrease from 4.99 percent a week prior.

#### STATE SELECTS FORMER IBA MEMBER FOR ECONOMIC POST

Chad Pittman, a lawyer and veteran land developer, recently joined the Indiana Economic Development Corporation as Executive Vice President, the state's job hunting agency. Pittman

joins the state's job hunting agency following a year-long deployment to Iraq with the Indiana Army National Guard and a more than three-year as a corporate land developer with Indianapolis-based homebuilder C.P. Morgan.

## **LEGISLATIVE**

### **HOUSE COMMITTEE APPROVES ENERGY CODE OR STANDARD LEGISLATION, WITH AMENDMENT**

The House Committee on Environmental Affairs approved House Bill 1348 (Dvorak D-South Bend) this week 11-0 with an amendment allowing the commission to adopt either the International Energy Conservation Code (IECC) OR the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 BOTH for Class 1 structures. The amendment states the commission shall adopt any subsequent equivalent edition of the code or standard, including addenda, under IC 4-22-2, not later than two (2) years after the effective date of the subsequent edition (18 months in the original legislation). IBA advocated for Class 2 structures to be stricken from the bill. The bill will now move to the full Senate for further consideration.

### **ENERGY EFFICIENCY BILL TO BE HEARD MONDAY**

House Bill 1620 mandates energy efficient buildings for government buildings and requires the fire prevention and building safety commission to revise the Indiana Energy Conservation Code before January 1, 2010 will be heard in the House Ways and Means Committee on Monday afternoon. IBA remains opposed to the mandate portion of the bill and have expressed our concerns to the bill's author Representative Matt Pierce (D-Bloomington).

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=1620>

### **LEAD-BASED PAINT ACTIVITIES LEGISLATION TO BE HEARD TUESDAY**

Senate Bill 202, dealing with lead-based paint activities, has been scheduled for a hearing next Tuesday. The legislation transfers the lead-based paint program from the Indiana Department of Environmental Management to the Indiana State Department of Health. IBA has requested an amendment to restore the current definition of "lead-based paint activities" as it pertains to abatement work and would like to see the fees included in the bill as they currently exist in statute.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=202>

### **FORECLOSURE OF RENTAL PROPERTIES PASSES COMMITTEE**

House Bill 1081, dealing with foreclosure of rental properties was amended and passed out of committee this week. The amendment, among other things, requires not later than 10 days after a foreclosure complaint on real property is filed, the plaintiff seeking foreclosure shall provide each tenant written notice. The bill now moves to the House floor for further deliberation.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=1081>

## **LEGISLATION OF INTEREST**

**Senate Bill 404 Homeowners Associations (Tallian D-Portage)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=404>

Provides that: (1) a grantee of real estate is not liable for; and (2) the real estate conveyed is not subject to a homeowners association lien for; any unpaid homeowners association assessments against the grantor unless the grantee has actual knowledge of the unpaid assessments. Allows the manager of a homeowners association to enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. Provides that a complaint must be filed not later than six years after the date the statement and notice of intention to hold a lien is recorded instead of one year after the date. Allows a homeowners association or the manager of the homeowners association acting on behalf of the association to: (1) bid on the real estate at a homeowners association lien foreclosure sale; and (2) acquire, hold, lease, mortgage, and convey the real estate. Specifies that an action to recover a money judgment for unpaid homeowners association common expenses may be maintained without foreclosing or having a lien securing the expenses.

**Senate Bill 469 Limited Liability for Certain Asbestos Claims (Boots R-Crawfordsville)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=469>

Limits civil liability arising from asbestos claims for certain corporations.

**Senate Bill 487 Underground Plant Protection (Charbonneau R-Valparaiso)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=487>

Requires the operator of an underground facility to join the Indiana Underground Plant Protection Service (IUPPS) or its successor organization. Requires an operator to provide information concerning the locations of its underground facilities to the IUPPS. Requires notice of an excavation or demolition to be provided to the IUPPS at least three days before work commences. (Current law requires notice of at least two days.) Provides that a person who: (1) causes damage to an underground facility; (2) is required to provide notice of an excavation or demolition to the IUPPS; and (3) recklessly, knowingly, or intentionally fails to provide the notice; commits a Class D felony. Provides that a person who knowingly fails to observe certain precautions before or during an excavation or demolition commits a Class D felony. Deletes obsolete provisions requiring operators to record underground facility locations with county recorders. Makes conforming amendments. Repeals an obsolete provision concerning the responsibilities of IUPPS.

**Senate Bill 580 Unauthorized Alien Matters (Delph R-Carmel)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=580>

Unauthorized alien matters. Requires the department of correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions. Provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail. Requires an individual filing a claim for unemployment insurance to provide certain information in person to the department of workforce development. Prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United

States Immigration and Customs Enforcement, local law enforcement agencies, and the department of labor (department) under certain conditions; and (4) maintain certain records of violation orders. Requires the department to initiate administrative proceedings against an employer for knowingly hiring an unauthorized alien. Prohibits the department from initiating a proceeding against an employer that verifies the employment authorization of an employee through the E-Verify program. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification.

**House Bill 1249 Treatment of Unsold Homes as Inventory (Herrell D-Kokomo)**

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=1249>

Provides that single family residential property (other than land) is considered inventory and is therefore not subject to property taxation if the property: (1) is held by the builder on the assessment date in the ordinary course of the builder's trade or business; and (2) has never been occupied for any purpose.

**House Bill 1278 Water Nuisances (M. Smith R-Columbus)**

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=1278>

Water nuisances. Provides that a person who unreasonably improves the person's land and causes an increased or altered flow of diffused surface water onto the land of another person is liable for the damages caused by the unreasonable increased flow of water. Permits a person whose land is damaged by the altered flow of diffused surface water to bring an action to abate or enjoin the unreasonable improvement that caused the altered flow of water. Specifies that: (1) this law does not limit the availability of other civil remedies for damages caused by water; and (2) to the extent that this law conflicts with the common enemy doctrine, the common enemy doctrine is abrogated.

**House Bill 1348 International Energy Conservation Code (Dvorak D-South Bend)**

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=1348>

Requires the fire prevention and building safety commission to adopt the most recent edition of the International Energy Conservation Code before July 1, 2010. Requires the commission to adopt any subsequent editions of the code not later than 18 months after the effective date of the subsequent edition.

**House Bill 1378 Improper Classification of Employees (Niezgodski D-South Bend)**

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=1379>

Provides that an individual performing services for a contractor or subcontractor on a construction project is considered to be an employee of the contractor or subcontractor, with certain exceptions. Provides for investigations of the employment relationship between an individual and a contractor or subcontractor by the department of labor, for certain procedures to be followed in investigations, and for various civil penalties to be assessed by the department of labor for the failure to properly classify individuals as employees. Provides for the sharing of information concerning the classification of individuals as independent contractors among the department of labor, the department of state revenue, the department of workforce development, and the worker's compensation board of Indiana. Provides that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection. Provides for criminal penalties for the improper classification of

employees as independent contractors, and prohibits the awarding of contracts for public work projects to a contractor or subcontractor for four years after the contractor or subcontractor is found to have committed certain recurring improper classifications. *The bill moved out of the House Committee earlier this week, but exempts residential construction from most aspects of the bill. IBA will continue to monitor the legislation.*

**House Bill 1380 Energy Efficient Buildings (Niezgodski D-South Bend)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1380>

Requires a building or structure constructed, reconstructed, repaired, altered, or retrofitted with certain public works contracts entered into after December 31, 2009, to be designed with the goal of achieving the silver rating under the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, the Green Globes Two Globes level, or an equivalent standard under an equivalent rating system that is accredited by the American National Standards Institute. Provides that for state agency purchases, there is a 5% price preference for certain office equipment that is compliant with the United States Environmental Protection Agency Energy Star ratings. Allows the Indiana economic development corporation to adopt rules allowing the corporation to give priority to economic development projects that meet or surpass the standards of the leadership in energy and environmental design ratings systems developed by the U.S. Green Building Council or the Green Building Initiative.

**House Bill 1441 Numerous Changes to Planning and Zoning Law (Pearson D-Hartford City)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1441>

Eliminates review of zoning decisions by certiorari, and establishes a judicial review procedure. Provides procedures for vacation of a plat, including any recorded covenants. Prohibits, for two years after an unsuccessful vacation petition, a subsequent vacation proceeding regarding the same property and relief. Allows a plan commission to grant waivers from the subdivision control ordinance, and provides that a plan commission may allow or require a commitment to be made. Makes changes regarding: (1) qualifications of citizen members of plan commissions and boards of zoning appeals; (2) appointment of alternate members to all plan commissions (current law allows only an area plan commission to appoint alternate members); (3) disqualification of plan commission and board of zoning appeals members due to financial interest or bias; (4) publication of the zoning ordinance; and (5) commitments and conditions. Makes other changes to the planning and zoning law. Repeals superseded statutes concerning vacation of plats, commitments, and writ of certiorari.

**House Bill 1631 Regulation of Residential Landlords/Tenants (Bardon D-Indianapolis)**

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1631>

Regulation of residential landlords/tenants. Imposes certain procedural requirements on the adoption by a political subdivision of a regulation of landlord tenant relations, residential leases, or inspection of real property subject to a residential lease. Provides that such a regulation may not: (1) require the licensing or registration of owners of residential rental property; or (2) impose a fee for certain inspections. Provides that such a regulation may not authorize investigation or inspection of a rental unit without probable cause.