

INDIANA BUILDERS ASSOCIATION
Legislative and Regulatory Report #3
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NEWS/HIGHLIGHTS

ATTEND HOUSING INDIANA LEGISLATIVE LUNCHEON AT THE STATEHOUSE

Plan today to attend the Housing Indiana luncheon being held at the Statehouse on Monday, February 23rd from 11:30 a.m. - 1 p.m. This will be the one opportunity of the year to speak with legislators from across the state on important issues facing the General Assembly with an impact on the construction industry. The timing of the event could not be better; the deadline for pieces of legislation to leave their chamber of origin is later that week. 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.

LEGISLATIVE

STATEWIDE CONSTRUCTION REGISTRY LEGISLATION ON HOLD

Senate Bill 373 Mechanic's Liens (Kruse R-Auburn)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=373>

Establishes a state construction registry program (program) to create and maintain an electronic data base for the filing of certain mechanic's liens that relate to the construction, alteration, or repair of Class 2 structures. Requires the office of technology to supervise the program and to contract with a third party to operate the program. Provides that the program must: (1) maintain a central data base; (2) accommodate electronic filing; (3) assign a lien identification number; (4) provide notification by electronic mail to the filer; and (5) be indexed to permit searching. Authorizes the office of technology to charge a fee sufficient to cover the expenses of the program. Makes other changes and conforming amendments.

IBA staff and other interested groups recently met to discuss legislation creating a statewide construction registry for the filing of mechanics liens. After much discussion with interested parties, IBA decided that the bill should not move forward since no compromise could be struck between the groups.

RETENTION POND BILL HAS HEARING

Senate Bill 351 Barrett Law Funding for Retention Pond Barriers (Bray R-Martinsville)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=351>

Specifies that Barrett Law funding may be used to finance a fence, mound, guardrail, barrier, or other structure necessary or useful to: (1) limit access by children to a retention pond; or (2) reduce the likelihood that a vehicle will enter a retention pond. Provides that if such an improvement is constructed under the Barrett Law within a platted subdivision, the works board may assess all or part of the lots in that subdivision for the improvement.

SB 351 was heard in Senate Tax and Fiscal Policy Committee this week. The bill affords additional options to locals under the Barrett law for retention ponds. The legislation would allow locals the opportunity to tap the Barrett law for fencing in retention ponds in existing subdivisions with homeowners assessed for the costs. IBA opposed including the term "fence" as it would not necessarily provide a positive means and can create hazards for emergency respondents and curious children.

FINANCIAL INSTITUTIONS CONTINUES DEBATE ON MORTGAGES

There are a number of pieces of legislation filed in the House dealing with banks and lending but House Department of Financial Institutions Chairman Jeb Bardon (D-Indianapolis) hopes that his committee can put together one comprehensive piece of legislation. The committee resumed work on the issue this week and IBA is monitoring discussions.

FORECLOSURE AND TENANT BILL PASSES COMMITTEE

Senate Bill 225, dealing with foreclosure and tenants, passed out of the Senate Committee on Judiciary this week. The bill requires notice to be given if a judgment of foreclosure is entered concerning property. IBA is monitoring the bill as it moves through the process. <http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=225>

LEGISLATION OF INTEREST

Senate Bill 58 Property Tax Assessment of Undeveloped Land (Walker R-Columbus)

<http://www.in.gov/legislative/bills/2009/IN/IN0058.1.html>

Limits to one year the period during which undeveloped land in the inventory of a land developer is not subject to property tax reassessment.

Senate Bill 241 Construction Industry Disaster Volunteer Program (Merritt R-Indianapolis)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=241>

Establishes the construction industry disaster volunteer program (program). Provides immunity from civil liability to a construction industry professional and the construction industry professional's employer for services provided by the construction industry professional as a participant in the program during a disaster. Authorizes reimbursement for certain expenses incurred by a construction industry professional while participating in the program during an emergency. Makes technical corrections.

Senate Bill 387 Recorder Fees Deposited in Affordable Housing Fund (Deig D-Indianapolis, Becker R-Evansville)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=387>

Recorder fees deposited in affordable housing fund. Requires (in a county other than Marion County) a county that has authorized an additional recording fee to distribute the fees to each city and town within the county that has established an affordable housing fund and, if the county has established an affordable housing fund, to the county. (Current law provides that in these counties, 60% of the money is distributed to units that have established affordable housing funds and 40% of the money is transferred to the state for deposit in the affordable housing and community development fund.)

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 449 Underground Plant Protection (Charbonneau R-Valparaiso)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=449>

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 IUPPS. Requires notice of an excavation or demolition to be provided to the association at least three days before work commences. (Current law requires notice of at least two days.) Provides that a person who: (1) is required to, but fails to, provide notice of an excavation or demolition to the association; or (2) 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 477 Department of Workforce Development Collections (Kruse R-Auburn)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=477>

Authorizes the department of workforce development (DWD) or its agent to collect delinquent unemployment insurance assessments and benefit overpayments after filing a judgment lien for the amount due. Authorizes collection of a judgment lien by taking any of the following actions: (1) Levy upon property held by a financial institution. (2) Garnishment. (3) Levy and sale of real or personal property. (4) Use of a data match system with financial institutions. Provides that officers and members of corporate, partnership, or limited liability company entities are personally liable for the payment of their employer's delinquent assessments. Authorizes the DWD to employ special counsel or contract with a collection agency and to set the fee that the counsel or agency receives. Adds collection fees to the judgment lien amount. Lengthens from one to three years the time in which the DWD may begin a collection action against an officer or director of a corporation effecting a dissolution, liquidation, or withdrawal. Establishes civil penalties that may be assessed against a financial institution that fails to provide information required for a data match system. Provides immunity for a person or entity taking an action in good faith to collect unemployment insurance assessments or benefit overpayments unless the action is contrary to the DWD's direction to the person or entity.

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.

House Bill 1071 Homeowners Associations (Cheatham D-North Vernon)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1071>

Prohibits a homeowners association from incurring indebtedness or liability on behalf of the homeowners association in an amount that exceeds \$5,000 during any calendar year unless incurring the indebtedness or liability is approved by the affirmative vote of a majority of members of the homeowners association. Specifies the procedures that must be followed when conducting the vote. Provides that all sums assessed by a homeowners association but unpaid for the share of the common expenses chargeable to an owner of real estate are not enforceable as a homeowners association lien on the real estate. Voids liens established and recorded under the law concerning homeowners association liens after the law became effective. Repeals other provisions concerning establishment and enforcement of homeowners association liens.

House Bill 1088 Homeowners Associations (Grubb D-Covington, Hinkle R-Indianapolis)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1088>

Applies the following to a homeowners association (association) established after June 30, 2009: (1) Requires an association to maintain a current roster of all members of the association (members). (2) Requires an association to prepare an annual budget that must be approved by at least 40% of the members. (3) Requires the board of directors of an association (board) to address an item of business if more than 50% of the members petition the board to address the item. (4) Prohibits a board from entering into certain contracts without the approval of the members. (5) Provides that the governing documents of an association must include grievance resolution procedures that provide for the final and binding arbitration of disputes. (6) Provides that the governing documents of an association must allow the termination of the association if at least 90% of the members agree to the termination. (7) Specifies that an unpaid regular annual assessment imposed by a homeowners association on a member is enforceable as a lien on real property owned by the member and all other unpaid assessments are not enforceable as a lien on real property owned by a member. (8) Prohibits an association from suspending the voting rights of a member for nonpayment of annual assessments unless the assessments are delinquent for more than one year. (9) Provides certain defenses to a member if the association brings a civil action against the member involving an act in furtherance of the member's right of petition or

free speech. Allows an association established before July 1, 2009, to elect to be governed by these provisions.

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 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.

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

<http://www.in.gov/apps/lsa/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 1400 School Impact Fees (Reske D-Pendleton)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&doctype=HB&docno=1400>

Authorizes a school corporation to adopt a school impact fee resolution that imposes an impact fee on new residential development. Provides that a school corporation may not adopt an impact fee unless the school corporation's capital projects plan includes the following components: (1) Projected school capacity needs for the current year and for not less than the succeeding four year period. (2) Estimated capital costs for the additional capacity needs. (3) Identification and general description of each project. (4) The estimated total cost of each project. (5) Identification of all sources of funds expected to be used for each project. (6) The planning, development, and construction schedule of each project. Provides that a school impact fee is equal to the proportionate share of costs incurred or to be incurred by a school corporation to provide school infrastructure that is required by, necessitated by, or needed to serve the new residential development, minus the sum of any nonlocal revenues, taxes, and charges that the fee payer and future owners of the development will pay for use of the school infrastructure.

House Bill 1580 Soil and Septic System Education and Research (Kersey D–Terre Haute)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1580>

Establishes the soil and septic system education and research council (council). Requires the dean of agriculture of Purdue University to establish and administer a soil and septic system education and research program. Establishes the soil and septic system education and research fund (fund). Provides that the council shall recommend expenditures from the fund for the soil and septic system education and research program. Requires the board of each county health department (and the Marion County health and hospital corporation) to impose a fee of \$10 on each permit issued by the county health department or the county for the operation, installation, construction, repair, or replacement of a septic system. Requires the fees to be paid to the treasurer of state for distribution to the fund.

REGULATORY

MODEL HOME ACT REGULATIONS SCHEDULED FOR HEARING

The Department of Local Government Finance (DLGF) recently announced plans for a public hearing on a proposed rule to establish formal procedures to govern the application for the deduction for model homes and can be found at <http://www.in.gov/legislative/iac/20090114-IR-050080755PHA.xml.html>. The public hearing will be held on Friday, February 6th at 3 p.m. in DLGF's conference room (100 N. Senate Avenue, Room N1058, Indianapolis, 46204). The DLGF also recently posted the application needed to begin taking advantage of the deduction. Visit <http://www.in.gov/icpr/webfile/formsdiv/53812.pdf> for the application.

NAHB NEWS

HOUSING STARTS CONTINUE TO PLUMMET, HIT RECORD LOWS IN DECEMBER

Indicating a continuing free-fall in the housing market, production of new single-family homes and permit issuance declined by double digits in December, falling to their lowest levels on

record for the month, according to U.S. Commerce Department figures recently released. In addition, total starts and single-family starts fell to record annual lows in 2008.

HOME REMODELS, RETROFITS ARE KEY TO AN ENERGY EFFICIENT FUTURE, NAHB PANELISTS SAY

As the nation's home builders embrace green building in growing numbers, industry research indicates that even the most aggressive efficiency goals for new homes won't make a dent in overall energy consumption. Instead, remodeling and retrofitting the nation's older homes is by far the more efficient solution, industry experts said at a press conference held at the International Builders' Show in Las Vegas. The home building industry can combat the potential effects of global climate change by providing additional training to its members and by encouraging home owners to alter some of their habits –and to make energy-efficient improvements to their homes, the panelists said.

CGP DESIGNATION CONTINUES STELLAR GROWTH AS NEW GREEN PROGRAMS, PARTNERSHIPS

A new agreement with Purdue University means that the Indiana school's construction management students will be the first in the country to earn a professional designation from the National Association of Home Builders University of Housing when they receive their bachelor's degrees. Students can earn the Certified Green Professional (CGP) designation to jumpstart their knowledge of green building practices.