

INDIANA BUILDERS ASSOCIATION
Legislative and Regulatory Report #4
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NEWS/HIGHLIGHTS

IBA MEMBERS TO PARTICIPATE IN LOCAL CONGRESSIONAL VISITS

The current economic stimulus plan is insufficient and IBA members will participate in local congressional visits on February 2 and 3, 2009 to Fix Housing First.

Here are the meetings scheduled to date with the Staff of Indiana's Congressmen:

- District 1 Congressman Peter Visclosky
- District 2 Congressman Joe Donnelly
- District 3 Congressman Mark Souder – Feb. 2nd at 9:30 a.m. at 2517 East Center Street, Warsaw.
- District 4 Congressman Steve Buyer - Feb. 2nd at 2 p.m. at Indiana Housing Center, 1011 Dr. Martin Luther King Jr. Street, Indpls.
- District 5 Congressman Dan Burton - Feb. 3rd at 8:30 a.m. at 8900 Keystone at the Crossing, Suite 1050, Indpls.
- District 6 Congressman Mike Pence - Feb. 2nd at 10 a.m. at Jud Construction, 5105 W. Bradburn Drive, Muncie
- District 7 Congressman Andre Carson
- District 8 Congressman Brad Ellsworth
- District 9 Congressman Baron Hill

Meetings with the Staff of our U.S. Senators are as follows:

Senator Richard Lugar - Feb. 3rd at 10 a.m. at Market Tower, 10 W Market Street, Suite 1180, Indpls.

Senator Evan Bayh – Feb. 3rd at 11:30 a.m. at Market Tower, 10 W Market Street, Suite 1650, Indpls.

The dress code for these meetings is business casual so it's perfectly acceptable for builders to wear their work attire.

Converge on your local congressional office and tell them to Fix Housing First! Login to www.nahb.org and see the legislative alert and additional resources related to this critical initiative.

Contact your local HBA for more information on visiting with your Congressman's staff. Contact IBA for additional information on the visits with Sen. Lugar and Sen. Bayh's staff.

CONTACT YOUR REPRESENTATIVE TODAY REGARDING THE ECONOMIC STIMULUS BILL

The economic stimulus bill voted on this week does not go far enough to help home buyers and the housing sector of the economy. The House bill, while removing the repayment requirement for the current \$7,500 home buyer tax credit, fails to expand the credit to all home buyers, fails to increase the credit amount past \$7,500, fails to extend the credit through the end of the year and fails to make the credit available at the closing table. The Senate has begun to debate its stimulus bill and moved a little further on the tax credit by extending the credit until September 1, 2009, in addition to eliminating the repayment requirement. In order to register the building industry's disappointment with the House stimulus package, please call your representative at (866) 924-NAHB (6242).

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.

NAHB APPLAUDS ANSI APPROVAL OF NATIONAL GREEN BUILDING STANDARD

The National Green Building Standard for all residential construction work including single-family homes, apartments and condos, land development and remodeling and renovation was recently approved by the American National Standards Institute (ANSI). The consensus committee deliberated the content of the standard for more than a year, held four public hearings and evaluated over 3,000 public comments in the development of the standard. Representatives from NAHB and International Code Council will hold a teleconference on Tuesday, February 3rd to help HBA staff understand how the ANSI standard will affect homeowners, elected officials and the building industry. The conference is free for NAHB-affiliated HBAs and NAHB encourages participants to gather in a single location and dial in from a speaker phone. Please contact your local HBA for more information.

JOBLESS RATE JUMPS AMONG NATION'S HIGHEST

Indiana's unemployment rate reached 8.2 percent in December, according to the U.S. Bureau of Labor Statistics. The state's jobless rate grew from 7.1 percent in November and is now 3.6 percentage points higher than the 4.6 percent rate recorded in December 2007. Nationally, unemployment rose in December to 7.2 percent from 6.8 percent the previous month, and is up 2.3 percentage points from a year earlier.

LEGISLATIVE

GOVERNOR TALKS ABOUT STIMULUS FUND

Indiana Governor Mitch Daniels recently spoke about the stimulus fund and wants to make sure Indiana gets its fair share. The state's share of the stimulus package will likely be between four and five billion dollars. Daniels has said Indiana and local governments and schools would get one-time money and should be used for one-time expenses. According to the House version, Indiana could receive between \$1.5 billion and \$2 billion for capital projects.

SENATE APPROVES ENHANCED PENALTIES FOR THEFT OF VALUABLE METALS

Senate Bill 21 (Tallian D-Portage, Steele R-Bedford) was approved by the Senate this week 49-1. The legislation would allow authorities to better investigate and prosecute those suspected of theft of metal. The bill will now move to the House of Representatives for further consideration. <http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=21>

TAX CREDIT FOR CEILING FANS PASSES HOUSE

House Bill 1415 (VanDenburgh D-Crown Point) was approved by the House this week 89-9. The legislation allows an individual income tax deduction of up to \$5,000 for installation of solar powered roof vents or fans. The bill will now move to the Senate for further deliberation. <http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=1415>

HOUSES DISCUSSES UNEMPLOYMENT INSURANCE TRUST FUND

The House Labor and Employment Committee met this week in an attempt to gather data regarding the Unemployment Insurance Trust Fund. The committee has reserved a vehicle bill for the issue which must be resolved this session since the Fund is currently staying afloat by borrowing from the Federal government. IBA will continue to be involved in this important issue as session moves forward.

SENATE COMMITTEE APPROVES RETENTION POND LEGISLATION, WITH AMENDMENT

The Senate Tax and Fiscal Policy committee approved SB 351 (Bray R-Martinsville) this week 11-0 with an amendment removing the term 'fence' from the legislation. The bill affords locals additional finance options under the Barrett Law for "a mound, guardrail, barrier, or other structure" around retention ponds. IBA advocated for the removal of the term 'fence' and the bill will now move to the full Senate for further consideration. <http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=351>

SENATE HOSTS ENERGY DAY

While many across the state were snowed in Wednesday, the Indiana Senate hosted its first Energy Day, packed with information. The day included speakers from the Governor's Administration regarding energy efficiency and federal carbon legislation, the impact of net metering from the Indiana Energy Association, smart grids, as well as other issues. About 50 legislators attended the half-day symposium and allowed the opportunity for legislators to gain information.

LEGISLATION OF INTEREST

Senate Bill 234 Public Safety Funding (Buck R-Kokomo)

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=234>

Eliminates the authority of a political subdivision to impose a property tax for public safety services. Imposes a public safety service fee instead of the property tax. Allows the imposition of an impact fee for capital improvements for public safety purposes. Requires a property insurer to pay a fire department reimbursement provided in a policy in response to the property owner's claim against the insurer. Allows a fire department to charge the property owner if the reimbursement is not paid.

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 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 492 Foreclosure of Residential Mortgages (Tallian D-Portage)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=492>

Provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a written notice to the debtor that informs the debtor of the default and offers the debtor the opportunity to participate in a conference with the creditor to negotiate a foreclosure prevention agreement. Requires the debtor to contact the creditor not later than 30 days after the date of the notice to schedule a conference. Provides that the debtor has the

right to be represented by an attorney or a mortgage foreclosure counselor at the conference. Requires the creditor to ensure that any person representing the creditor at the conference or in any negotiations with the debtor has authority to bind the creditor. Upon the conclusion of a conference, requires the creditor to report to the housing and community development authority (authority) on whether the parties were able to agree on the terms of a foreclosure prevention agreement. Provides that after June 30, 2009, a creditor may not proceed to file a residential mortgage foreclosure action unless: (1) the creditor has given the required notice offering a conference to the debtor; (2) either the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice, or the parties were unable to negotiate a mortgage prevention agreement after a conference is held; and (3) at least 90 days have elapsed since the date of the creditor's notice. Provides that in a residential mortgage foreclosure action filed after June 30, 2009, the court may not enter a judgment of foreclosure until 60 days after the date the complaint is filed, in a case in which the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice. Provides that, upon petition by the creditor, the court may waive the 60 day period under certain circumstances. Provides that in the case of a residential mortgage foreclosure action that: (1) is pending on July 1, 2009; or (2) is filed after June 30, 2009; the court having jurisdiction of the action shall serve notice of a settlement conference on the parties to the action. Provides that the notice must set forth a date and time by which the parties must conduct a settlement conference. Provides that the date specified in the notice may not be earlier than 25 days after the date of the notice or later than 60 days after the date of the notice. Provides that the notice must require: (1) the debtor to contact a mortgage foreclosure counselor before the settlement conference and bring to the settlement conference certain documents; and (2) the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the foreclosure action is based. Provides that each party has the right to be represented by an attorney or a mortgage foreclosure counselor at the settlement conference. Provides that the settlement conference must be held at the county courthouse at the date and time specified in the court's notice unless the parties agree to hold the settlement conference: (1) by telephone; or (2) in person at a location agreed to by the parties; at a time and date agreed to by the parties, but not later than the time and date specified in the notice. Provides that any party may file: (1) objections to the settlement conference; or (2) a petition for the court to review a proposed foreclosure prevention agreement offered by the creditor to the debtor in connection with the conference held before the filing of the complaint; not later than 15 days after the date of the court's notice. Provides that after reviewing a proposed agreement offered by the creditor in connection with the previous conference, the court may order the parties to appear before the court for a hearing, instead of holding a settlement conference. Provides that the creditor shall ensure that any person representing the creditor at the settlement conference has the authority to bind the creditor. Provides that if the parties agree to enter into a foreclosure prevention agreement as a result of the settlement conference, the creditor must report that fact to: (1) the court; and (2) the authority; not later than seven business days after the signing of the agreement. Provides that if, after conducting a settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement: (1) the creditor must report that fact to the court and the authority not later than seven business days after the date of the settlement conference; and (2) the foreclosure action filed by the creditor may proceed as allowed by law.

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/lisa/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/lisa/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 1324 Employee's Right to Work (Torr R-Carmel)

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1324>

Makes it a Class A misdemeanor for an employer to require an individual to: (1) become or remain a member of a labor organization; (2) pay dues, fees, or other charges to a labor organization; or (3) pay to a charity or another third party an amount that represents dues, fees, or other charges required of members of a labor organization; as a condition of employment or continuation of employment. Establishes a separate private right of action for violations or threatened violations.

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

<http://www.in.gov/apps/lisa/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/lisa/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/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/lsa/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.

REGULATORY

STATE MAY ADOPT ASHRAE STANDARDS

David Pippen, Policy Director for Environment and Natural Resources in Governor Daniels office, spoke at the Energy Day Wednesday and announced the administration will likely seek to adopt the ASHRAE 90.1-2007 code for the commercial energy code. Pippen said a formal announcement could likely come in the weeks ahead with more details unveiled at that time. A number of bills filed in the legislature require the Indiana Energy Conservation Code to be updated either with ASHRAE or IECC standards with a couple requiring the adoption of subsequent editions of the code not later than 18 months after the effective date of the subsequent edition.

ISDH TO HOLD PUBLIC HEARING REGARDING RETAIL ESTABLISHMENTS & LEAD

The Indiana State Department of Health will hold a public hearing to discuss proposed amendments to 410 IAC 29-1 through 410 IAC 29-4 to add and update current definitions, update case management requirements for local health departments, add civil penalty provisions against labs that fail to comply with statutory requirements, and update prevention and remediation requirements for local health departments. Adds rules to 410 IAC 29 to provide protections for the public against consumer products that contain or may contain lead, establish requirements for retail establishments to offer information and lead test kits to consumers about lead-based paint hazards, establish minimum criteria for training programs for retail employees, and establish fees as necessary to accomplish these purposes. The hearing will take place Tuesday, February 3rd at 10 a.m. at the State Department of Health (2 N. Meridian Street, Indianapolis, 46204). For details on the proposed rule, please visit http://www.in.gov/isdh/files/Proposed_Rule.pdf.

WATER POLLUTION CONTROL BOARD TO HOLD HEARING

The Water Pollution Control board plans to hold a public hearing to discuss amendments to 327 IAC 11 concerning implementation of Indiana law regarding environmental impact statements

for major state actions that may significantly affect the quality of the human environment. The hearing will take place on Wednesday, February 11 at 1:30 p.m. at the Indiana Government Center South (402 W. Washington St., Indianapolis, 46204) in conference center room 32. For details on the proposed rule, please visit <http://www.in.gov/legislative/iac/20081022-IR-327080210SNA.xml.html>.

NAHB NEWS

WORSENING DATA UNDERSCORES NEED FOR HOUSING STIMULUS

The U.S. Commerce Department recently reported that sales of newly built single-family homes slid 14.7 percent to the lowest monthly pace on record in December of 2008. This double-digit decline, on top of substantial downward revision to home sales data for the previous three months, brought the seasonally adjusted annual rate of new home sales to just 331,000 units for December, representing a 76% decline from the market peak in 2005.

NEW LEADERS ELECTED FOR 2009

NAHB elected four Senior Officers to top leadership positions within the federation during the association's International Builders' Show in Las Vegas. Taking the helm as NAHB's Chairman of the Board this year is Joe Robson, a Tulsa, Oklahoma-based home builder. Bloomfield Hills, Michigan-based home builder Bob Jones was elected to be NAHB's First Vice Chairman of the Board. Bob Nielsen, a Reno, Nevada-based builder was elected to the post of 2009 Second Vice Chairman. Barry Rutenberg, a Gainesville, Florida-based home builder joined the NAHB leadership ladder with his election to the post of Third Vice Chairman. Rounding out the association's leadership is NAHB Executive Vice President and CEO Jerry Howard, from Washington, D.C. who was promoted to the position in February of 2001.