

INDIANA BUILDERS ASSOCIATION
Legislative and Regulatory Report #17
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IBA's Legislative and Regulatory report will now be sent bi-weekly instead of weekly as the General Assembly has adjourned from the 2009 regular session.

HIGHLIGHTS/NEWS

WEATHERIZATION STIMULUS UPDATE – AUDITOR TRAINING ANNOUNCED

The IBA has submitted a plan to the Indiana Housing and Community Development Authority to administer a portion of the weatherization program that was included in the recent federal stimulus package. IBA's proposal would include managing the program statewide utilizing our network of local associations, contractors, subcontractors, and supplier relationships across the state. IBA anticipates an announcement on contract awards from the state in the next 30-45 days and required training for weatherization contractors to begin soon. For weatherization auditor training, please access http://www.in.gov/ihcda/files/WX_auditor_training_flyer4.pdf. Pre-test screening for the first wave of auditor training is May 4-7. IBA will keep the membership abreast of any developments with the State's Weatherization Program. For additional information, you can contact IBA at: info@buildindiana.org.

IOSHA STEPING UP RESIDENTIAL INSPECTIONS

The Indiana Builders Association has received word from contractors in the state that IOSHA inspectors have been hitting residential jobsites in northern Indiana over the past week. Please be aware of your jobsite requirements and visit the following NAHB website for additional OSHA Construction Safety information or visit the state's website for INSAFE below.
http://store.builderbooks.com/cgi-bin/builderbooks/149?id=qgC9pKcS&mv_pc=44
<http://www.in.gov/dol/insafe.htm>

HOUSING, ECONOMIC GROWTH NOW HEADING TO HIGHER GROUND

The nation's housing industry and the economy have just about seen the worst of the painful downturn that greatly intensified since last September's turmoil in the financial markets, according to economists speaking on April 23 at NAHB's Construction Forecast Conference. "There's a lot of skepticism out there. This is a very deep hole we're in," acknowledged NAHB Chief Economist David Crowe. But he said there are several reasons to believe that "the housing recession is nearing an end and housing will return on a very slow basis."

MORTGAGE ACTIVITY INCREASES

On a seasonally adjusted basis, the pace of mortgage loan activity increased 5.3 percent last week according to the Mortgage Bankers Association. Overall, mortgage rates were mixed, with 30-year loans increasing to 4.73 percent, from 4.7 percent, and 15-year mortgages remaining unchanged at 4.46 percent.

POST SESSION WRAP-UP

MODEL HOME TAX RELIEF IMPACTS 2009 TAX BILLS

The Indiana General Assembly passed a revision to the model home act passed in 2008 late in the 2009 session that applies the provisions in existing law to the 2009 payable tax bills for model/spec homes. IBA lobbyists worked late into the evening to negotiate a compromise with leadership in the House and Senate to pass a bill that applies the model home act tax relief language to tax bills coming out this year. This piece of legislation should bring some much needed relief to builders who have existing model/spec. homes in inventory right now. A link to the existing law and the bill that just passed are below. Many legislators on both sides of the aisle helped the IBA on this critical issue.

<http://www.in.gov/legislative/ic/code/title6/ar1.1/ch12.6.html>

<http://www.in.gov/legislative/bills/2009/HE/HE1071.1.html>

BUDGET FAILS, LEGISLATORS HEAD TO SPECIAL SESSION

The Indiana General Assembly adjourned from the 2009 regular session but the House voted 27-71 defeating the budget bill leaving legislators to be called back to the Statehouse to pass a budget during a special session. The budget needs to be passed by June 30 which marks the start of a new fiscal year although the Governor has not announced when he plans to call legislators back to work on the matter. IBA will continue working and discussing the possibility of an Indiana-specific New Home tax credit to be included in the next budget that would be open to all home buyers.

UNEMPLOYMENT INSURANCE TRUST FUND BILL PASSES

The Unemployment Insurance Trust Fund issue was one of the more difficult tasks lawmakers tackled this session as the bankrupt jobless fund needed an infusion of cash to keep federal regulators from taking over Indiana's program. A bill passed late in the evening on Wednesday that will lower the rate for many credit balance employers while raising the rate on debit balance employers. IBA was appointed to a special task force over the summer to review the solvency of the Trust Fund and recommend changes to the current structure. Many of IBA's members are small businesses who are credit balance employers. Employers now pay into the system premiums ranging from 1.1 to 5.6 percent based on Indiana's taxable wage base or the first \$7,000 of an employee's annual wage. Under the compromise plan, several changes in premiums would help plug the fund's gap. What is known as the taxable wage base would be increased from \$7,000 to \$9,500 and the minimum and maximum premium rates would range from .70 to 9.5 percent for calendar year 2010, with annual minimum employer contributions per employee ranging from \$66.50 to \$902.50. After that year, businesses would begin paying premiums based on a new rate schedule ranging from .75 to 10.2 percent, with annual minimum and maximum employer contributions per employee ranging from \$71.25 for businesses not tapping the fund, while the maximum contribution would increase to \$969 for those who use the fund the most – still below the Midwest average maximum contribution of \$1041; and Employers would be able to make contributions over five years beginning in 2010 or 2011 to buy down to a lower range of premiums – similar to paying points on a mortgage – generating up to an additional \$75 to \$100 million in extra revenues to jump-start the fund's balance. The bill will also reform the system potentially saving the fund about \$302 million annually, making up nearly half of the \$617 million proposed overhaul.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=1379>

BURDENSOME EMPLOYEE CLASSIFICATION BILL FAILS – BUT ISSUE ADDRESSED

The employee classification bill that passed the House earlier this session did not pass the General Assembly this year, but the issue was addressed in other legislation. IBA was successful in amending residential construction from the original bill. However, SB 478 provides for the sharing of information concerning the classification of individuals as independent contractors in the construction industry among the department of labor, the department of state revenue, the department of workforce development, and the worker's compensation board of Indiana. It also 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. IBA supported SB 478 as a good tool to get a handle on the classification issue.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=478>

PROPERTY TAX CAPS NOT VOTED ON IN HOUSE

The Indiana House did not take up Senate Joint Resolution 1 which if passed would have allowed the tax caps (1% - 2% - 3%) passed by the General Assembly in 2008 to go in front of the voters in 2010. The General Assembly must pass the resolution in the upcoming special session or in the 2010 short session or the issue will not be eligible for a voter referendum in 2010 to put the caps in the Constitution.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=0001&doctype=SJR>

HOMEOWNERS ASSOCIATION BILL PASSES

HB 1071 (Rep. Cheatham D-North Vernon) deals with homeowners associations and will impact all homeowners associations established after June 30th. This was one of the last pieces of legislation passed the House and Senate after reaching a compromise with IBA. IBA has been wrestling with this issue for several years and with the passage of the bill it would be our hope not to revisit the issue in the near-term.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&session=1&request=getBill&docno=1071>

WATER NUISANCE BILL HEADS TO SUMMER STUDY COMMITTEE

HB 1278 (Rep. M. Smith, R-Columbus), which originally dealt with water nuisances and diffusing surface water from one person's land to another, passed the General Assembly in the waning hours of session, but sent the water nuisance issue to a summer study committee. The bill urges the legislative council to assign to a study committee the topic of water rights, drainage, and utilities and awaits the Governor's signature into law. IBA will be working on the issue over the summer with interested parties and Legislators.

<http://www.in.gov/legislative/bills/2009/HE/HE1278.1.html>

IMMIGRATION BILL DIES IN HOUSE

SB 580 (Sen. Kruse, R-Auburn) dealing with immigration died without receiving a hearing in the House this session. The bill included language to revoke the business licenses of companies that repeatedly hire illegal workers among other provisions passed the Indiana Senate earlier this

session by a vote of 37-13. House Speaker Patrick Bauer has said he believes immigration is a federal issue and should not be dealt with in Indiana. IBA concurs with that position and continues to urge Congress to address the issue.

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

HOLEY MOLEY BILL AWAITS GOVERNOR SIGNATURE INTO LAW

SB 487 (Sen. Charbonneau, R-Valparaiso) requires an operator to provide information concerning the locations of its underground facilities to the IUPPS. Establishes the underground plant protection advisory committee (advisory committee). Authorizes the advisory committee to conduct hearings on certain violations of underground plant protection law and recommend penalties to the Indiana utility regulatory commission. Establishes the underground plant protection account to receive deposits of civil penalties. Deletes obsolete provisions requiring operators to record underground facility locations with county recorders. IBA worked with the author of the bill to address our outstanding concerns with the legislation.

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

NEW DISCLOSURE FOR RENTAL PROPERTY IN FLOOD PLAIN

HB 1473 (Rep. M. Smith R-Columbus) requires residential, agricultural, and commercial rental agreements entered into or renewed after June 30th this year must disclose if a structure on the property is located on a flood plain.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1473>

GREEN BUILDING MANDATE DIES

HB 1620 (Rep. Pierce D-Bloomington) which required certain government buildings to be designed and constructed to achieve or exceed green building standards did not pass out of committee in the second half of session and was not amended into any other legislation. IBA is opposed to any green building mandates and would prefer an incentive-based approach.

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

LEAD-BASED PAINT PROGRAM TRANSFERS AGENCIES

SB 202 (Sen. Gard R-Greenfield) transfers the lead-based paint activities program from the Indiana Department of Environmental Management to the State Department of Health is awaiting the Governor's signature. The Department of Health has been administering the program under a memorandum of understanding and now will receive statutory authority to continue doing so. IBA will be watching for any changes made to the current program.

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

RETENTION POND LANGUAGE DID NOT MOVE FORWARD

SB 351 (Sen. Bray R-Martinsville) was to allow the Barrett Law funding to finance various structures around retention ponds but failed to receive a hearing in the second-half of session and was not amended into other legislation. IBA initially raised concerns with including the term 'fence' in the legislation as an acceptable barrier and that language had been removed.

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

DEDUCTION FOR INSTALLATION OF A SOLAR POWERED ROOF VENT OR FAN DOES NOT MOVE FORWARD

Language in the conference committee report on HB 1447 (Rep. Welch R-Bloomington) contained an adjusted gross income deduction for a taxpayer that had a solar powered roof vent or fan installed. The credit was equal to the lesser of 50% of the amount paid for labor and materials in the installation or \$1,000. The conference committee report was adopted in the Senate but the House did not pass it before adjourning. To view the language, see links under conference committee reports.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1447>

THEFT OF METAL LEGISLATION PASSES

SB 21 (Sen. Tallian D-Portage) strengthens theft of metal law. The bill, among other things, provides a definition of a valuable metal, requires a valuable metal dealer to photograph a person from whom the dealer purchases valuable metals, raises theft and receiving stolen property to a Class C felony if the stolen property is a valuable metal taken from certain places.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=21>

MORTGAGE LOAN ORIGINATORS AND PRINCIPLES TO BE LICENSED

House Bill 1646 (Rep. Burton R-Whiteland) changes the statute concerning the regulation of loan brokers to specify that the law applies to residential mortgage loans. The bill also requires mortgage loan originators and principal managers be licensed, rather than registered, by the securities commissioner. The legislation sets forth a number of requirements for licensing which include: a written examination, submit fingerprints every three years for use in criminal history background checks, authorize the commissioner to obtain a consumer report, and annually renew the license.

<http://www.in.gov/apps/lisa/session/billwatch/billinfo?year=2009&request=getBill&docno=1646>

FORECLOSURE SETTLEMENT COUNSELING PASSES

SB 492 (Sen. Holdman R-Markle), among a variety of other items, creates a settlement conference procedure with lenders and the courts for homeowners going through a foreclosure in an attempt to encourage residential mortgage modifications. The conferences are funded through a \$50 court fee for mortgage foreclosure actions filed before June 30, 2009, and before January 1, 2013.

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

ENERGY CODE FOR CLASS 1 STRUCTURES PASSES

HB 1348 (Rep. Dvorak, D-South Bend), which originally included class 2 structures, passed the General Assembly and awaits the Governor's signature into law. The bill requires the Fire Prevention and Building Safety Commission to adopt the most recent edition, including addenda, of the: (1) International Energy Conservation Code (IECC), as published by the International Code Council for Class 1 structures; or (2) American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1 for Class 1 structures before July 1, 2010. The commission may amend the code or standard as a condition of adoption under this subsection. IBA worked with the author of the bill to exempt class 2 structures.

<http://www.in.gov/legislative/bills/2009/HE/HE1348.1.html>

BILL LICENSING INTERIOR DESIGNERS PASSES

HB 1573 (Rep. Welch, D-Bloomington) requires the professional licensing agency to create an electronic registry for interior designers; establishes registration criteria for interior designers and sets fees, and provides that the professional licensing agency is not liable for misrepresentations, fraud, or omissions caused by an individual who is registered on the registry. The article applies to a person who practices interior design after December 31, 2009. This article does not apply to a registered architect, a registered professional engineer, or an owner or employee of a manufacturing, wholesale, or retail establishment who provides consultation regarding interior decoration or furnishing on the premises of the establishment. The legislation previously gave interior designers the authority to officially stamp design plans in which there are no structural or mechanical changes; however, only engineers and architects have stamping authority. <http://www.in.gov/legislative/bills/2009/HE/HE1573.1.html>

NO MOVEMENT ON REAL ESTATE TRANSFER TAX OR TAX ON SERVICES

As Legislators looked to craft a new two year budget over the last four months, a real estate transfer tax and tax on professional services continued to come up as a funding source to offset the loss of revenue due to the economy. IBA and other trade associations continue to advocate against those new taxes and the potential negative ramifications on the real estate and housing industry if those new taxes were instituted. IBA will be working with the Indiana General Assembly during the upcoming special session to craft a budget without any new tax on services or real estate transfer tax.

IBA SUPPORTED ENVIRONMENTAL BILL PASSES

HB 1162 (Rep. Tyler, D-Muncie) passed the House and Senate in the waning hours of session after reaching a compromise on language of great interest to the IBA. HB 1162 contained among other things, a provision dealing with antidegradation, which is a review process required by federal law to ensure surface waters are protected. The review is in addition to the underlying permit, which in IBA members' case is a Rule 5 permit for stormwater associated with construction activity. IBA has been involved in the rulemaking for over ten years and the legislation will allow the agency to move forward on general permits (Rule 5 and others) as meeting the antidegradation review and provides guidance to IDEM on factors to be considered in a social and economic review of the permit. IBA supported the legislation and is appreciative of the work of the authors and sponsor of the bill, including Rep. Pearson (D-Hartford City) and Senator Gard (R-Greenfield).

<http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2009&request=getBill&docno=1162>

LEGISLATION OF INTEREST THAT DIED DURING 2009 SESSION

HB 1400 School impact fees

Reske D-Pendleton

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.

HB 1441 Numerous changes to planning and zoning law *Pearson D-Hartford City*

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.

SB 58 Property tax assessment of undeveloped land

Walker R-Columbus

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

SB 220 Annexation

Gard R-Greenfield

Provides, with certain exceptions, that when a municipality initiates an annexation, the municipality must file a petition with the court containing the signatures of: (1) at least 75% of the landowners in the territory proposed to be annexed; or (2) the owners of more than 75% in assessed valuation of the land in the annexed territory. Provides that, if the court finds that the petition has a sufficient number of signatures, a hearing will be conducted to review the annexation and fiscal plan. Allows a person to intervene as a party at the hearing to review the annexation and fiscal plan if: (1) the person is an owner of property in the territory; (2) the person, and no other owner of the property have signed the petition filed by the municipality; and (3) the person appeared at the hearing conducted by the municipality on the annexation ordinance or submitted a remonstrance or other document into the record of the hearing. Eliminates a procedure that requires the court to order an annexation not to take place if certain circumstances are shown. Removes provisions allowing a municipality to obtain waivers of a landowner's right to remonstrate against an annexation. Provides that in all circumstances an annexation becomes effective when the ordinance or judgment is filed by the municipal clerk.

SB 234 Public safety funding

Buck R-Kokomo

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.

SB 284 International energy conservation code*Errington D-Muncie*

Requires the fire 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.

SB 373 Mechanic's liens*Kruse R-Auburn*

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.

SB 387 Recorder fees deposited in affordable housing fund *Deig D-Mount Vernon*

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.)

REGULATORY**PUBLIC HEARINGS FOR AMENDING THE IRC AND NEC ON MAY 7TH**

The public hearings on the proposed rule amending the current Indiana Residential Code (IRC) (LSA Document 09-139) and the proposed rule to adopt by reference and amend the 2008 National Electrical Code (NEC) as the Indiana Electrical Code, 2009 Edition (LSA Document 09-140) are scheduled for Thursday, May 7 in Conference Center Room 22 at 402 West Washington Street, Indianapolis. The hearing on the Residential Code will begin at 9:00 a.m. and the hearing on the Electrical Code will begin at 11:00 a.m. A few of the proposed changes to the IRC include bubble covers in wet locations; weather-resistant receptacles in both damp and wet locations; a GFCI receptacle required within any deck, balcony, or porch accessible from the inside of the house that has a usable area of 20 square feet or more; HVAC convenience receptacle required within 25 feet of the outside condenser unit, and all garage receptacles are to be GFCI protected. For copies of the proposed rules contact Carlie at 800-377-6334 or Carlie@BuildIndiana.org.