

CURRENT AGENCY ACTION THAT WILL AFFECT YOUR BUSINESS

Rulemaking	History	Status	BIAW Action
<p>Low Impact Development</p> <p>Agency: Department of Ecology (DOE)</p> <p>Staff: Jodi Slavik</p>	<p>Low impact development (LID) is a set of development techniques that disperses and infiltrates rainwater at its source. Previously encouraged in a few local erosion control ordinances, LID is now mandatory in Phase I jurisdictions.</p>	<p>DOE issued revised Phase I & II municipal permits in January 2007. Enviros and local governments appealed the permits. A key provision of the 8/08 decision requires LID “where feasible” in Phase I jurisdictions (Seattle, Tacoma, King, Pierce, Snohomish, Clark counties). Phase II jurisdictions must encourage LID. Ecology is convening technical and implementation committees to advise Ecology on which LID practices will be used, what makes them “feasible”, and how well they have to perform.</p>	<p>BIAW has requested a seat at the technical advisory table, and it will remain active in both the technical committee and implementation committee. Meetings are expected to start September, 2009 and run through May, 2010. The Phase I permit and Western Washington Stormwater Manual will be amended to include LID requirements June, 2010.</p>
<p>Stormwater Permit Fees</p> <p>Agency: Department of Ecology (DOE)</p> <p>Staff: Jodi Slavik</p>	<p>Ecology bills contractors annually for construction stormwater general permits based on its May - June fiscal year. Annual fees range from \$450 - \$1800. For the 2003-2005 biennium, Ecology recovered over \$25 million from 4,500 wastewater and stormwater permit holders.</p>	<p>Ecology received approval from the 2009 Legislature to raise fees for 2009 and 2010. Currently they are allowed to do so every other year. Ecology has also proposed to eliminate back-end proration. Contractors terminating or transferring permits any time after June will not receive a prorated return of the annual fee paid.</p>	<p>BIAW will oppose the fee increases and, more importantly, the proration elimination. The proration change unfairly hurts small and summer construction projects. Instead, BIAW will ask Ecology to adopt a one-time fee appropriate to the scale and demands of the project. Comments are due by September 9th.</p>
<p>Instream Flow Rulemaking</p> <p>Agency: Department of Ecology (DOE)</p> <p>Staff: Jodi Slavik</p>	<p>Ecology is authorized under RCW 90.22 to establish minimum water levels for streams in critical watersheds. RCW 90.82 directs Ecology to adopt instream flows where local watershed planning groups have accepted state funds for watershed assessments. Ecology is working in 17 watersheds to develop instream flow rules, with 9 basins in active rule development. The rules close impaired streams and create finite reservations of water; once the water reservation is used, no more exempt wells are allowed.</p>	<p>The status of the basin rules are as follows: Entiat: rule adopted 8/05. Quilcene-Snow: rule drafting in progress. Stillaguamish: rule adopted 8/26/05. Skagit River: rule adopted in 2001; appealed by Skagit County; negotiated language adopted 5/06; implemented 1/07. Samish: rule drafting in progress. Elwha Dungeness: rule drafting in progress. Walla Walla: rule adopted 9/07. Wenatchee: rule adopted 12/07. Grays-Elochoman: rule drafting in progress. Cowlitz: rule drafting in progress. Lewis: rule adopted 1/09. Salmon-Washougal: rule adopted 1/09.</p>	<p>BIAW submitted comments opposing the rulemaking in two watersheds: Stillaguamish and Skagit River. In its comments, BIAW contested Ecology’s authority to impose a reservation that restricts exempt wells. BIAW also opposed rule provisions that increased local liability, encouraged lawsuits, and undermined the ability to reach housing targets.</p> <p>BIAW will continue to track the rules to ensure that adequate water is provided for future housing needs.</p>
<p>Wetland Mitigation Banking</p> <p>Agency: Department of Ecology (DOE)</p> <p>Staff: Jodi Slavik</p>	<p>In 1998, the Legislature passed ESHB 2339, allowing state certification of public and private mitigation banks. The Wetlands Mitigation Banking Advisory Team was formed to draft rules for the creation and use of banks. The rules and public comment were completed in 2001, but DOE withdrew the rules before final adoption in May 2002, citing budget cuts.</p>	<p>The program was revived in 2004 with funding for a pilot program to test the rules. The program was extended through 2007. To date, eight banks have been certified, but only three are private banks and only two have credits available for developers (Snohomish and Skykomish). The draft rule was released in March 2009, with the final rule adoption slated for July 31, 2009.</p>	<p>BIAW served on the original rule writing committee and helped revive the mitigation banking program in 2003, including support of funding for a pilot program.</p> <p>BIAW is an active member of the advisory committee that provides guidance to DOE on the pilot program and the wetland banking rules.</p>

<p>Growth Management Act</p> <p>Agency: Dep't of Commerce (formerly Dep't of Community, Trade & Economic Development)</p> <p>Staff: Julie Nichols</p>	<p>The state Department of Commerce is updating the administrative guidelines implementing the Growth Management Act (GMA), codified under the Washington Administrative Code (WAC).</p> <p>The Code is updated periodically to reflect legislative action, court decisions and stakeholder input.</p>	<p>In March 2009, DOC released its preliminary draft rules for stakeholder comment, with the final draft filed in July. The draft rules, among other things, seek to provide regulatory guidance on issues such as buildable lands inventory, concurrency, urban density and critical areas. BIAW submitted comments opposing more stringent critical areas regulations and requiring concurrency for stormwater facilities. DOC will take comments on the proposed rule through early October 2009, with public hearings scheduled for the last week of September.</p>	<p>BIAW submitted comments in March on the preliminary draft rules.</p> <p>In early May, BIAW met with Gregoire Administration/DOC staff to discuss BIAW concerns.</p> <p>BIAW is currently reviewing the lengthy updated version of the proposed rules in preparation for public comment in September.</p>
<p>Exempt Wells: Kittitas County Emergency Rule</p> <p>Agency: Department of Ecology</p> <p>Staff: Julie Nichols</p>	<p>After several months of negotiations, DOE filed an emergency rule that closed northern Kittitas County to all new groundwater withdrawals as of July 31, 2009.</p> <p>Under Washington's exempt well law, no permit is necessary to drill a well as long as the user takes less than 5,000 gallons a day. Most development in Kittitas County relies on exempt wells for water.</p> <p>State law allows for "emergency rules" -- implemented without public notice and comment -- to be enacted when an agency determines that immediate action is "necessary for the preservation of the public health, safety, or general welfare."</p>	<p>The emergency rule, affecting all exempt wells in upper Kittitas County, is in effect for 120 days and Ecology has indicated a desire to make the rule permanent.</p> <p>Chapter 173-539A WAC (the emergency rule) withdraws from appropriation all ground water in Upper Kittitas County with the exception of uses for structures for which building permits were granted and vested prior to July 16, 2009 and uses which are determined to be water budget neutral.</p> <p>Governor Gregoire was immediately asked to invalidate Ecology's emergency rule, a request she denied.</p> <p>County officials are currently back at the negotiating table with Ecology, working toward a compromise.</p>	<p>BIAW immediately joined legislators, Kittitas County BIAW members and staff, local elected officials, and other stakeholders to strategize options – both legal and otherwise – for fighting the moratorium.</p> <p>BIAW staff will continue to closely monitor Ecology's actions and work with local BIAW members, other stakeholders, and County officials to craft a solution that provides an alternative to an all-out ban on exempt wells.</p>
<p>Washington State Energy Code</p> <p>Agency: Washington State Building Codes Council</p> <p>Staff: Eric Lohnes</p>	<p>On 2/7/07, Gov. Gregoire created the Climate Advisory Team (CAT). It produced an interim report in 2007 and a final report in 2008. Embedded in the 2008 report was a recommendation to revise the Energy Code to reduce new building energy use by 30%. The report also promotes "substantial efficiency advances in the code as it applies to remodeling, retrofit and equipment replacements."</p>	<p>Of the almost 260 proposed Building Code amendments, 172 were directed at the Energy Code. Of the 172 proposals, 111 came from City of Seattle, Department of Community, Trade & Economic Development (now Department of Commerce), and Washington State University.</p> <p>The Energy Technical Advisory Committee met weekly for several months. Included in the proposals are changes that will add significant cost to the construction of new homes.</p>	<p>BIAW attends all WSBC meetings and Energy Technical Advisory Committee meetings, informing members how the proposals will impact builders and new home costs.</p>

<p>Residential Fire Sprinklers</p> <p>Agency: State Building Code Council (SBCC)</p> <p>Staff: Eric Lohnes</p>	<p>Despite opposition from NAHB, the International Codes Council (ICC) voted last September to mandate fire sprinklers in all single-family homes and townhouses. If residential fire sprinklers are not removed from the International Residential Code (IRC), they will be required by July 1, 2010.</p>	<p>BIAW and the Washington Association of Building Officials (WABO) introduced code amendments to the SBCC to eliminate the fire sprinkler mandate. In May, both code amendments passed out of the SBCC's IRC Technical Advisory Group. The SBCC will hold hearings September 2009 to determine the fate of the two proposals.</p>	<p>BIAW submitted code amendments to eliminate the fire sprinkler mandate. In addition to attending the IRC Technical Advisory Group meetings, BIAW is educating members, gathering advocates, and preparing for public hearings in September.</p>
<p>Resellers Permit</p> <p>Agency: Department of Revenue</p> <p>Staff: Brian Minnich</p>	<p>Effective 1/1/10, the resale certificate will be replaced with a resellers permit issued by the Department of Revenue. Resellers permits are free and will be issued to businesses that make wholesale purchases, including qualified contractors. The permits allow businesses to purchase items or services for resale without paying retail sales tax. Custom contractors can get a resellers permit valid for one year.</p>	<p>SB 6173 passed into law during the 2009 legislative session with an effective date of 1/1/10. DOR is currently holding a series of meetings to gain feedback from the business community on the impacts to businesses and ways to mitigate those impacts.</p>	<p>BIAW is attending DOR meetings to promote a quick application process and reasonable, non-punitive administration of the program.</p>
<p>Heat Stress Rule</p> <p>Agency: Department of Labor & Industries</p> <p>Staff: Amy Brackenbury</p>	<p>In 2006, the Department of Labor & Industries proposed an emergency 'heat stress' rule which was met with criticism from the employer community. The emergency rules expired, but the agency adopted a permanent rule in 2008. BIAW opposed the rule.</p>	<p>L&I's permanent heat stress rule is currently in place. It requires employers to train employees and supervisors about the risks associated with working in warm weather, and to have a plan in place for addressing potential heat related illnesses. Employers must also provide water for their employees. Some of the more onerous requirements, such as misting stations and cooling tents, are <u>not</u> part of the permanent rule.</p>	<p>BIAW continues to monitor L&I's enforcement of the heat stress rule. In 2009 the agency proposed to expand penalties for failing to train employees, which would have allowed employers to be fined up to \$7,000 per occurrence for what was essentially a "paperwork" violation. BIAW strongly objected to this change and L&I relented. The rule remains in effect from May – September each year.</p>
<p>Paid Family Leave</p> <p>Agency: L&I</p> <p>Staff: Amy Brackenbury</p>	<p>The 2007 Legislature passed SB 5659, establishing a Paid Family Medical Leave benefit. The legislation also created a task force to determine how to pay for the new benefit, which will be approximately \$25 million for the first year. The Legislature also appropriated a loan from the workers' compensation trust fund to pay for administrative costs of the program startup.</p>	<p>A funding mechanism for the Family Leave benefit has yet to be identified by the Legislature. Although the benefit was scheduled to start in 2009, the lack of a funding mechanism caused the Legislature to delay implementation of the program until 2012.</p>	<p>BIAW objected to the continuation of the Family Leave program and attempted to eliminate it during the 2009 legislative session. The program continues to incur administrative costs which are being funded through the workers' compensation trust fund, although the benefits are unrelated to workplace injuries. BIAW continues to object to this misuse of L&I trust funds.</p>

<p>Retro Program</p> <p>Agency: L&I</p> <p>Staff: Amy Brackenbury & Tom Kwieceiak</p>	<p>As always, the retro program is under siege by unions, liberal democrats, and L&I in an attempt to defund BIAW and other free market associations. The 2007-09 operating budget included a proviso directing L&I to hire an independent expert to evaluate and recommend retro program improvements. A similar provision was included in the 2009-2011 operating budget, despite a staggering \$9 billion budget deficit.</p>	<p>L&I established a retro proviso study group and hired outside consultants to evaluate the program. L&I is expected to announce a 20% rate increase early September (an August meeting was cancelled). L&I also indicated that it will make changes to the retro program through rules and legislative proposals, including seeking refunds of alleged overpayments to employers.</p>	<p>BIAW is actively participating in the proviso study group and has retained outside counsel and actuarial services to evaluate the work of L&I's consultants. BIAW will also be actively involved in all proposed changes to the retro program. As a member of a retro coalition, BIAW is considering legal action against refund requirements and an initiative to privatize workers' compensation.</p>
<p>Underground Construction Economy</p> <p>Agency: L&I</p> <p>Staff: Amy Brackenbury</p>	<p>Senate Bill 5926, passed by the 2007 Legislature, created a task force to review the underground economy in the construction industry. John Bratton was appointed to serve as BIAW's representative on the task force.</p>	<p>The task force continues to meet and has forwarded two legislative proposals which have been enacted to help officials crack down on unregistered contractors. In 2009, the task force was extended to December to allow task force members to evaluate the underground economy in industries outside construction.</p>	<p>BIAW continues to follow the work of the task force.</p>
<p>Claims Suppression</p> <p>Agency: L&I</p> <p>Staff: Amy Brackenbury</p>	<p>The 2007 Legislature passed SB 5443 to prohibit the suppression of workers' compensation claims. Even though suppression is already illegal, this bill expands the definition and increases penalties.</p>	<p>L&I intends to file the draft rules in September 2009.</p>	<p>BIAW participated in a work group to help draft the rules to define and implement the new law, despite having opposed the legislation.</p>
<p>Crane Safety</p> <p>Agency: L&I</p> <p>Staff: Donovan Quebeaux</p>	<p>The 2007 Legislature passed House Bill 2171 regarding crane safety.</p>	<p>Phase 1: Accreditation of crane certifiers of cranes and derricks, and operator qualifications and certification. This phase is now complete. Phase 2: Addressing the requirements that employers must follow with regard to inspection, maintenance, and operation of cranes used in the construction industry. Phase 2 is in the development stage; dates for hearings are still to be determined.</p>	<p>BIAW will follow Phase 2 as it develops. Federal OSHA's rule language will be released soon, requiring Washington state to make changes once again, to meet OSHA's mandates.</p>
<p>Fall Protection</p> <p>Agency: L&I</p> <p>Staff: Donovan Quebedeaux</p>	<p>Many L&I rules have gone through "plain language rewrites" for "clarity, ease of use, and understanding." The fall protection rule may be the last for some time.</p>	<p>The fall protection rule rewrite combines two parts of the construction safety code for clarity. In addition, the DOSH/WISHA intends to clarify current language which has created confusion at worksites with respect to walking-working surfaces on roofs.</p>	<p>BIAW is closely tracking the language revisions to ensure that there are no substantive changes. Public hearings are expected this Fall. The language started out with excessive regulatory requirements, but has been brought down to only a clear language rewrite.</p>