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BIAW Calls on Gov. Inslee To Repeal Department of Labor & Industries Emergency Fines Rule

Olympia, WA The Building Industry Association of Washington (BIAW) petitioned the governor today to repeal the emergency rule that would allow the Department of Labor and Industries (L&I) to fine businesses that violate the Stay At Home Order.

BIAW outlines the three problems with the emergency rule (WAC 296-800-14035) adopted by L&I on Tuesday: the rule lacks legal justification, is unconstitutionally vague and is devoid of statutory authority.

“BIAW does not contend that COVID-19 is not an emergency and has in fact actively participated in the governor’s working groups putting forward unanimous safety recommendations for the construction industry to return to work in Phase 1 and Phase 2,” said BIAW General Counsel Jackson Maynard. “But there is no justification for an emergency rule allowing L&I to impose fines on people who are already subject to arrest and criminal prosecution under the existing order.”

BIAW participated in a working group, which included input from L&I, that recommended the Phase I and II safety requirements for construction that the governor adopted and ordered. Those requirements included a role of L&I for enforcement, but the only penalty specifically mentioned in either the Phase I or Phase II requirements is shutting down a construction job site until compliance can be achieved. The law also provides that violations could be punished as a gross misdemeanor.

“Now L&I is trying to assert additional authority to hit contractors and workers with an administrative fine as well that could be in the thousands of dollars,” added Maynard. “Given that L&I already has sufficient tools to enforce the Stay at Home Order, there is no need for an emergency rule.”

BIAW argues that the emergency rule is unconstitutionally vague and violates due process. “The emergency rule is very bare-bones and just says you have to obey whatever emergency order the governor issues. That is not enough to comply with the constitution,” continued Maynard.

Additionally, BIAW asks the governor to consider that no statutory authority for the emergency rule exists.

“The only penalty that is authorized by the Legislature in RCW 43.06.220(5) for willful violation of a governor’s order is a gross misdemeanor. For all of these reasons, we are calling on the governor to repeal this emergency rule,” concluded Maynard.

Under Washington state law, Gov. Inslee has seven days to respond to BIAW’s petition.

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The Building Industry Association of Washington is the voice of the housing industry as the state’s largest trade association with nearly 8,000-member companies employing approximately 265,000 people. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. Learn more at: www.biaw.com

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