

JANUARY 17, 2005



**SCANNEWS**  
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THE LATEST NEWS IN GOVERNMENT AFFAIRS  
FROM THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS



ICSC has contributed \$1 million on behalf of the global shopping center industry to organizations that are providing direct relief to the victims of the 2004 South Asia and East Africa tsunami. In addition to the \$1 million contribution, ICSC has established a website, <http://tsunamirelief.icsc.org> so that shopping center professionals throughout the world can make a donation to a coordinated industry effort. The \$1 million contribution and all money raised through ICSC's tsunami relief website will be donated equally to the International Committee of the Red Cross, Doctors Without Borders (Médecins Sans Frontières or MSF), and Oxfam International.



### ICSC Strategic Leadership Summit

April 12 -13, 2005

Willard Inter-Continental Hotel, Washington, DC

Tuesday, April 12th

ICSC Leadership Sessions – plus, gain legislative and political insight into the new Congress. In the evening join us for ICSC's Congressional Reception in the magnificent Great Hall at The Library of Congress

Wednesday, April 13th

Congressional Meetings on Capitol Hill.

To register, visit <http://www.icsc.org> and view "Meetings."

## ARIZONA

### *Anti-Tax Incentives Legislation Expected*

The Arizona Legislature convened on Jan. 10 with expectations among industry members that several legislators would introduce anti-tax incentive legislation. The industry has been working with Senator Jay Tibshraeny (R-Chandler) to draft a bill that would address process changes to ensure that retail incentive projects are a "win-win" for both cities and developers. However, at least two senators have indicated they will propose legislation to either outright eliminate such incentives or severely curtail their effectiveness. For example, one senator is believed to be interested

in proposing legislation that would require a city to offer the same retail sales tax incentive to any business within a 2.5 radius of a proposed project.

Other issues of interest to the industry are state trust land reform and limits on gift card expiration dates and maintenance fees.

## CALIFORNIA

### *Governor Proclaims 2005 as "Year of Reform"*

In his recent State of the State address Governor Arnold Schwarzenegger (R) called for landmark reforms to the budget system, state pensions, education structure and making government more

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responsive to the people. The Governor called for reforming the budget system, state pensions, the education system and eliminating politically-drawn districts. In addition to identifying the areas and issues that require reform, the Governor also convened a special session of the Legislature to pursue these reforms.

### ***Possible Split Roll Tax Effort Returns***

The split-roll tax effort has resurfaced in the legislature in the form of a proposed ballot initiative, which could end up on the ballot as early as this year. The initiative could increase business taxes by as much as 50%. ICSC, in conjunction with the California Business Properties Association, will track efforts and keep members informed on the situation.

### ***Governor Sends Reorganization Plans to Little Hoover Commission***

On Jan. 7, Governor Arnold Schwarzenegger sent two proposals for reorganizing state government to the Little Hoover Commission. The proposals included the plan for the elimination or reform of 88 boards and commissions and the reorganization plan to transform the Youth Adult Correctional Agency into the Corrections and Rehabilitation Department. The Little Hoover Commission has 60 days to review the Governor's reorganization plans and submit its report on the plans to the Legislature. The Governor can submit the plans to the Legislature himself 30 days following its submission to the Little Hoover Commission. If neither house of the Legislature votes down the plan within 60 days of its submission to the Legislature, the reorganization

becomes operational by law. The reform proposals came out of the California Performance Review (CPR). The CPR spent nine months examining the best ways to eliminate duplication and increase accountability in government. Hearings were held across the state and 10,000 Californians gave input throughout the process.

### ***Favorable Court Ruling on Prevailing Wage Requirements***

On Dec. 20, the California Supreme Court rendered its decision in the case of *City of Long Beach v. Department of Industrial Relations*, 2004 Cal. Lexis 11908 (Cal. Sup. Ct. 2004). The Court's decision considered whether an animal control facility constructed on City of Long Beach land and leased by the private developer (SPCA-LA) was a "public work" subject to Prevailing Wage Law requirements because the City had provided public funding to assist with pre-construction costs and expenses. The Court, in reversing the Court of Appeal, concluded that under the law in effect at the time an agreement was entered into between the City and the SPCA-LA for construction of the facility, the term "construction" as defined in Labor Code section 1720(a)(1) did not include such "pre-construction" costs and expenses as legal fees, insurance premiums, architectural design costs, and project management and surveying fees. This court case, in addition to the subsequent amendments made to the law to address some of the unintended consequences, clearly was testimony to the flaws contained in the original implementing legislation – S.B. 975.

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### ***Sacramento Pursues Anti-Big Box Measure***

The City of Sacramento has become the latest local government to consider placing greater restrictions on specific types of retail establishments. The Law and Legislation Committee approved a measure that would require a fiscal analysis – including tax revenue and effects on other businesses – for retail stores that are 90,000 square feet or larger or that use 20 percent of the floor space to sell non-taxable merchandise, such as groceries. The proposed measure would exclude wholesale and membership stores. Members of the Committee as well as all of the Sacramento City Council members were notified of concerns that such a measure would reduce consumer choice and marketplace competition.

## **COLORADO**

### ***Legislature Considers Eliminating Real Estate Recovery Fund***

The Department of Regulatory Agencies recently presented their budget for FY 2005-06 to the Colorado Joint Budget Committee (JBC). At issue were the benefits and costs of eliminating the Real Estate Recovery Fund that protects consumers from real estate fraud. The JBC is looking at cutting the cash fund since it counts toward the Colorado TABOR (Taxpayer Bill of Rights) limit and appears to only benefit a small portion of people with an average of four to eight claims per year. A Task Force of Real Estate Professionals is currently reviewing the benefits of the Fund. As the 2005 legislative session begins Jan. 12, it is possible that legislation

repealing the fund may emerge. The 2005 session begins on a new foot with control in both houses now in Democratic hands.

## **MICHIGAN**

### ***Books Closed for FY 2003-04 on High Note***

Two months ago, state officials were worried the state may end its fiscal year 2004 with a \$148 million deficit. In actuality, the state was able to make an \$81 million contribution to the Budget Stabilization Fund (BSF). In addition, there was a \$74 million surplus in the School Aid Fund.

The contribution to the BSF is the first major transfer since FY 1999-00 when \$100 million was contributed to the fund. The unexpected surplus is attributed to better than expected results from state spending cutbacks and increases in non-tax revenues.

### ***Petitions Filed Against Affirmative Action***

The Michigan Civil Rights Initiative (MCRI) held a press conference at the Capitol in early January to announce that they collected 508,202 petition signatures and were intending to file the signatures to put a proposal on the 2006 ballot. The signatures, if found to be valid, would set an election in 2006 to eliminate affirmative action on the basis of race and sex in all branches of the Michigan government and in all its universities. The referendum could be avoided if the legislature acts to meet the proposals requirements prior to the election.

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Fully aware of the eagle-eye inspection the petition will receive from its opponents, the MCRI was able to file more than its goal of 460,000 signatures. A total of 317,757 signatures are required to put this issue on the ballot for 2006. The 508,202 petition signatures filed was the largest number ever collected for a ballot issue in Michigan history.

The leading opposition group, Citizens for a United Michigan, confirmed that they would scrutinize each signature. Spokesperson David Waymire believes that the MCRI has misled people throughout the course of the petition, and so the extra examination is essential to validate the signatures. Citizens for a United Michigan also believes that even if the petition were accepted, the length of time between now and the 2006 elections would be an advantage for their side of the issue.

Along with Citizens for a United Michigan, Governor Jennifer Granholm (D) fiercely opposes the proposal. Granholm does not believe that affirmative action discriminates against certain people and anticipates that Michigan voters will reject the proposal in the 2006 election.

## MINNESOTA

### *2005 Legislative Session Begins*

The 2004 Legislative session was notable for the legislature's inability to put politics aside and compromise. The voters in the November elections signaled their displeasure with the do nothing legislature by unseating 14

House incumbents, including 13 republicans (the Senate was not up for election). If the first day of session is any indication, the 2005 legislature did not get the message. There is still partisan bickering and, it appears, little will to reach across the aisle.

Governor Tim Pawlenty (R) has continued to stick by his no new taxes pledge. The Governor has indicated that his budget, released later this month, will include significant changes in the Health and Human Services budget, but has provided few other clues on the make up of his budget. At this point, neither the House nor Senate has proposed tax increases to solve the deficit problem.

Until the Governor's budget is released, the legislature will not be taking significant actions on any legislation. The next few weeks will be filled with introductions and overviews.

## MONTANA

### *Senate Considers Impact Fees for New Developments*

Senator Jeff Mangan (D), a majority party member, has filed Montana S.B. 185, a measure that would authorize local governments to impose impact fees on all new development in order to fund capital improvements affected by the new development. In determining the fee, the government entity must conduct a needs assessment study in order to determine whether the capital improvements are actually necessary. Finally, the impact fees must be reasonably related to the benefits accruing to the development paying the fees. This bill has been referred to the

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Senate Local Government Committee. The sponsor serves as the Chairman of this committee and committee sources indicate the measure will likely report from committee.

## NEW JERSEY

### ***Anti-Big Box Bill Suffers Setback***

A.B. 3504, the big box bill sponsored by Senator Stephen Sweeney (D-Gloucester) and Assembly Member Neil Cohen (D-Union), has been pulled from consideration on the Senate side. While Sweeney withdrew the bill in the Senate, Cohen is amending his bill and expected to continue to push his legislation. The bill, however, has lost significant momentum and will likely not pass during this legislative calendar.

The original bill would have created a municipal planning board under the New Jersey Department of Community Affairs made up of members of adjacent communities to large retail development. Any project involving retail stores with over 130,000 square feet and the sale of at least 10 percent of the goods as non-taxable items, would need an economic impact plan and approval from neighboring communities. ICSC representatives met with the Assembly committee in late 2004 to express concerns about the measure and lobby for specific amendments.

### ***Gift Card Bill Introduced***

On Jan. 11, Senator Joseph Vitale (D) introduced S.B. 2187, which requires that gift certificates and gift cards issued by retail merchandise establishments be redeemable at full unused value until presented in exchange for merchandise

in perpetuity. In addition, the bill provides that no dormancy fee shall be charged against a gift card or a gift certificate and defines dormancy fee as a charge imposed against the unused value of a gift card or gift certificate due to inactivity. The bill has been referred to the Senate Commerce Committee.

## NEW YORK

### ***Governor Pataki Delivers his 11<sup>th</sup> Annual State of the State***

The 2005 Legislative session commenced on Jan. 5 with Governor George Pataki's (R) State of the State address. This was the Governor's 11<sup>th</sup> annual message.

Governor Pataki focused much of his speech on achievements of the past decade and challenged lawmakers to help continue to build upon his legacy of reforming government, strengthening the state's economy and improving public programs in the areas of criminal justice, health care, education and the environment. He committed to addressing the state's fiscal condition by pushing for tax relief for the counties, phasing out recent tax increases on personal income and simplifying the state tax code.

In the area of economic development, the Governor unveiled operation "SPUR" – Strategic Partnership for Upstate Revitalization with the goal to target growth in the Upstate economy. Pataki promised lawmakers his budget proposal would contain a seven-point plan to direct resources to revitalize these Upstate communities including enacting a single sales factor for

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manufacturers, new job and high-tech tax credits and creation of Agri-Business Opportunity Zones. The Governor also unveiled a \$2.7 billion economic development initiative for the Hudson Valley and Capital region. The new high tech program is the result of months of negotiations between the state and IBM, ASML of the Netherlands and several other companies. The public-private partnership requires \$225 million in state contributions to help purchase new equipment at existing research facilities, including State University at Albany. Pataki stated that this type of investment could create over 1,000 new jobs Upstate.

### ***New York City Labor Council President Fights to Keep Out Wal-Mart***

Brian McLaughlin, President of the NYC Central Labor Council and Queens Assemblyman is leading the fight to block retail giant Wal-Mart from opening its first store in the City. Wal-Mart already has numerous stores located through New York State and recently announced plans to open its first New York City store in Rego, Queens by 2008.

McLaughlin, speaking on behalf of 1.5 million city workers, was joined this week by labor and small businesses leaders in formally voicing their opposition against Wal-Mart, which they claim has a long history of paying low wages, blocking unions and driving independent stores out of business.

The New York City Council held a hearing this week to examine the potential impact of "big-box" stores and Wal-Mart's employment practices.

## **RHODE ISLAND**

### ***Changes to Gift Card Policies Considered***

On Jan. 12, Representative Brian Patrick Kennedy (D) introduced H.B. 5027, which expands the definition of gift certificates, outlines what types of records retailers must keep regarding the sale of gift certificates, and prohibits retailers from charging service or maintenance fees or placing expiration dates on gift certificates. The bill has been referred to the House Corporations Committee and prospects for consideration are favorable. Representative Kennedy introduced H.B. 7424 last session, which eliminated expiration dates and fees from gift cards and certificates, but allowed exemptions for third-party retailers, such as malls and businesses that issue re-loadable gift cards. H.B. 7424 was enacted July 9, 2004. Sources in the sponsor's office indicate that the purpose of H.B. 5027 is to remove that exemption and that this bill has the support of the Rhode Island Attorney General's office.

## **TEXAS**

### ***79<sup>th</sup> Session of the Texas Legislature***

The Texas Legislature will convene in regular session on January 11. On their agenda will be revising the school finance system as required by a state district court ruling, granting property tax relief, revising the state's tax system including business taxes, reforming the system of workers' compensation insurance, and reviewing the distribution of water resources.

### ***Budget Update***

Comptroller Carole Keeton Strayhorn released the biennial revenue estimate on January 10, saying that \$400 million in additional revenue will be available for the 2006-2007 biennium. She predicted that the 79<sup>th</sup> legislature will have \$6.4 billion more in general revenue than was appropriated by the 78<sup>th</sup> Legislature; however, \$6 billion of that new money will be needed to maintain current spending levels through fiscal year 2007. She said, "Our state's great economic engine is improving. We have experienced 16 months of positive sales tax growth. Seven of the 10 economic indicators I watch every day are up. I expect to see a continuation of growth trends in 2005 and into the next biennium. Growth in the economy reflected in my estimate will be solid and sustained. I am projecting growth in the gross state product of 3.5 percent in fiscal year 2005, and 3.2 percent in both 2006 and 2007."

### ***Lieutenant Governor's Priorities for the 79<sup>th</sup> Session***

On January 6, Lieutenant Governor David Dewhurst (R) outlined his top legislative priorities including: Improving public education and reforming how it is financed; Enhancing the quality of care in Child Protective Services; Balancing the budget while keeping taxes low; Helping to make workers' compensation more affordable for employers and available to injured workers; Continuing to pursue homeowners' insurance relief for Texas homeowners; Working to make higher education more affordable, available and accountable to Texas students and their families; Reviewing the state's water policy to ensure adequate water for all parts of the state; and Making Texas government more open and accessible to the people it represents.



Shopping centers provide a safe, comfortable, convenient and enjoyable environment for consumers. They also serve as a catalyst for economic and community development, providing good jobs and generating significant tax revenues. They are truly the modern marketplaces and the **2005 Retail Real Estate World Summit** is the only global event dedicated to analyzing the retail property sector in a broader socio-economic context as well as to considering the important trends impacting our industry. Register today to reserve your place at the **2005 Retail Real Estate World Summit**. **To register visit [www.2005worldsummit.com](http://www.2005worldsummit.com)**

**All Registration Fees Will Go to the Shopping Center Industry Tsunami Relief Effort.**



**Don't miss the opportunity to have your shopping center recognized!**

January 31, 2005 is the application deadline for the inaugural "America's Marketplace Recycles!" Awards, established by ICSC in cooperation with the Environmental Protection Agency.

These new awards recognize outstanding achievements by ICSC members in recycling, conserving resources and the usage of recycled-content products, and will be presented prior to the 2005 ICSC Spring Convention

For more information, including an application form, visit [www.icsc.org/government/AMR.shtml](http://www.icsc.org/government/AMR.shtml) or contact Kent Jeffreys at [kjeffreys@icsc.org](mailto:kjeffreys@icsc.org) or (202) 626-1405.

**Upcoming Alliance Meetings**

- Illinois Alliance Chicago, IL Jan 19
- Arizona Alliance Phoenix, AZ Jan 21
- Pennsylvania Local Alliance Philadelphia, PA Feb 9
- Tennessee Alliance Luncheon Nashville, TN Feb 22
- Gulf South Alliance Mobile, AL Feb 23
- West Michigan Alliance Grand Rapids, MI March 1

**ICSC State "Day at the Capitol" Events**

ICSC State Government Relations is working with our members in various states to host "Day at the Capitol" programs. The events serve as an opportunity to meet with legislators on issues of importance to the shopping center industry and network with other ICSC members.

- Tallahassee, FL Jan 26
- Columbus, OH Feb 16
- Lansing, MI Feb 23
- St. Paul, MN March 2

**2005 University of Shopping Centers**

The 2005 University of Shopping Centers will be held March 7-9, on the campus of The Wharton School of the University of Pennsylvania in Philadelphia. This education program was designed for public officials who work with shopping center developers and site planning professionals, municipal economic development, and elected officials of towns and cities to learn how to better attract shopping centers to their communities and enhance the relationship/ partnership between government and private industry. For more information, contact Madison Gross at [mgross@icsc.org](mailto:mgross@icsc.org) or visit <http://www.icsc.org/srch/mt/descs/2005UV/2005UV.pdf>.

To submit items to SCANews, please contact Stephanie Spooner at [sspooner@icsc.org](mailto:sspooner@icsc.org).