

JULY 18, 2005



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



SAVE THE DATE!

****FOR ALL GOVERNMENT RELATIONS CHAIRS!****

**Fall Government Relations Leadership Meeting
November 14 - 15, 2005**

Fairmont Chicago Hotel, Chicago, IL

Jeff Birnbaum, of the Washington Post, is a confirmed speaker for the event. Further details will be sent in late summer or you may contact Judy Laniak at (202) 626-1401 for additional information.

NATIONAL

Supreme Court Rules on Property Rights

The United States Supreme Court issued a ruling on June 23 in the case of *Kelo v. New London* (Connecticut). In a 5-4 split ruling that holds major implications nationwide for property rights and redevelopment issues, the Supreme Court upheld the decision of the lower court that a jurisdiction may utilize the power of eminent domain for the sole purpose of economic development. Oral arguments were heard before the U.S. Supreme Court February 22. Plaintiffs alleged the improper use of eminent domain authority by the New London (Connecticut) Development Corporation for economic development by private interests. The Development Corporation, which was transferred eminent domain authority from the New London City Council, sought to redevelop the property for a research facility for Pfizer, Inc., a conference center, hotel complex, offices, condominiums, and an aquarium. Legal precedent shows courts and legislatures across the country have adopted widely

varying standards on when eminent domain can be used. The decision vindicates the Connecticut Supreme Court, which ruled in favor of the City of New London, establishing that economic development constituted a public use that outweighed private property rights. Plaintiffs argued that since the neighborhood is not blighted or unsafe, it does not meet legal standards for eminent domain.

A wave of “reactionary” legislation is anticipated in response to the recent Supreme Court decision. Bills have already been introduced in Delaware, Minnesota, New York and Texas. Florida, Oklahoma, and Missouri have created study committees to review the issue. The Institute for Justice has initiated a \$3 million campaign to “combat eminent domain at the state and local level” and introduction of state legislation is an expected outcome. New legislation is already anticipated in Alabama, Connecticut, Georgia, Idaho, Missouri, Oklahoma, Massachusetts, New Jersey and Virginia.

CALIFORNIA

California Starts New Fiscal Year Without A Budget...Again

Once again, California is starting out its new fiscal year without a spending plan approved by the Legislature and signed by the Governor. Recent battles over the budget have caused the state to operate without one for months and this year may be the same. Even political pundits are not sure how long this year's budget showdown will last. However, recent actions by Governor Arnold Schwarzenegger (R) and the leaders of both parties in the Senate and the Assembly (known around budget times as the Big Five) may signal hope on the horizon for a budget deal to come together sooner rather than later.

Although there will be no widespread immediate effects of a late budget, the state soon will be unable to pay its vendors and suppliers and to make some payments to schools. If the budget stalemate moves into August, hundreds of legislative staffers and lawmakers will not receive paychecks.

Coastal Commission Deemed "Constitutional" by State High Court

The California Supreme Court, in a unanimous decision upheld the constitutionality of the California Coastal Commission in *Marine Forest Society v. California Coastal Commission*. The ruling, which cannot be appealed, ends a six-year legal battle between the Orange County-based Marine Forests Society, which had sought the authority to create artificial reefs, and the Commission.

Legislation Hindering the Movement of Goods from Ports Continues to Move

Legislation placing additional regulatory burdens on all entities involved in the movement of goods throughout the state was recently approved by the Assembly Transportation Committee. S.B. 760 (Lowenthal, D-Long Beach) would require marine terminal operators at the Ports of Los Angeles and Long Beach to pay a \$30 fee per twenty-foot equivalent container unit (equal to a \$60 fee on containers going through California ports) on all cargo. The fee would be used to fund additional port security, rail projects, and pollution mitigation. S.B. 760 will next be heard by the Assembly Natural Resources Committee.

This proposal would arguably make California less competitive in the global marketplace as additional fees impose a disincentive to economic activity.

Federal Endangered Species Act Update

The House Resources Subcommittee on Water and Power recently held an informational hearing on the impact that federally listed endangered species and the Endangered Species Act (ESA) have on water supply issues. It is critical to look at reform of the ESA because the effect of the implementation has led to water-shut offs in the Klamath basin, costly litigation, and millions of dollars spent in compliance with the mandate.

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***Anti-Industry Water/Land Use
Legislation Dies in Committee***

S.B. 409 (Kehoe, D-San Diego), a water/land use bill, was defeated in the Assembly Water, Parks and Wildlife Committee this month on a 6 to 8 vote. Many people believe that S.B. 409 was not needed due to existing laws relative to urban water management plans. The bill would have also placed an unnecessary and costly burden on local governments by mandating them to revise their general plans thereby hurting critically needed residential, commercial and industrial projects.

COLORADO

***Referendum C & D: The Biggest Fight
in Town***

The fight over Referendum C and D, designed to relieve the budget crisis brought on by a flaw in the Taxpayer's Bill of Rights (TABOR), has drawn big names and big money into the ring. Televised debates, competing radio ads and daily newspaper updates and editorials have inundated Colorado, and there are still four months to go until the election.

Recent budget reports estimate that without changes to the TABOR refund mechanism, next year the budget will decrease by 3.8 percent while mandated spending for education and Medicaid will increase by \$200 million. If approved by voters, Referendum C would allow the state government to keep TABOR surpluses that would otherwise be returned to taxpayers for the next five years. This return is entirely separate from state tax returns,

which would still return to taxpayers as always. Referendum D delegates how the money will be spent – road and highway projects, education and health care – and allows the state to bond against the money in order to begin projects right away. Referendum D will only go into effect if both C and D are passed.

Supporters of the referenda are a large and varied bunch, consisting of 187 different organizations. Coming out of the General Assembly, the ballot measures had bi-partisan support from Republican Governor Bill Owens and the Democrat led General Assembly, with a Democrat and a Republican serving as the bill's co-sponsors. A wide range of business and community interests have joined forces to support the measures, including realtors, school boards, builders and firefighters as just a few, raising over \$1 million so far.

The Independence Institute, leading the *No on C & D* campaign with the slogan "Vote no, it's your dough," insist that the flaw lies not with TABOR, but with Amendment 23. This amendment mandates additional K-12 spending, regardless of other budget constraints. The group contends that C and D constitute a tax increase, and are marketing it on the airwaves as such.

Battles between the two groups are already strong, with Governor Bill Owens and former U.S. House Majority Leader Dick Armey debating the two sides on KDBI – Channel 12 recently. With the outcome of this fight months away, both sides are expected to keep the pressure up through November.

MASSACHUSETTS

Legislation Would Prevent Officials From Seizing Private Property for Economic Development

Responding to the United States Supreme Court's decision two weeks ago that allows local governments to seize private property for economic development, House Minority Leader Rep. Bradley Jones (R-North Reading) announced he plans to file legislation that would prohibit local officials from taking homes and other private property by eminent domain for economic development purposes. Jones plans to file a resolution, legislation, and a constitutional amendment by the end of the week that would prevent local officials from what he said is an "abuse" of the eminent domain laws. In a letter to colleagues, Jones said, "I believe the policy set forth in the court's majority opinion goes against our constitutional heritage here in Massachusetts and the tradition we have of making sure eminent domain takings are limited to situations where there is a clear necessity to seize property in the name of the public good."

Growth Bills Considered in Senate and House

A coalition of legislators, municipal leaders and local planners recently pushed a plan to empower cities and towns to more strongly manage development, but opponents (builders and developers) said their proposal would be a disaster for housing production and lead to even higher housing prices.

Supporters of identical bills (S. 168 and H. 3544) said municipal planners "work tirelessly" to advance so-called smart growth and master plans, but those plans are routinely skirted by developers and landowners who take advantage of archaic grandfathering and approval-not-required zoning bylaws to circumvent the intent of planners.

But builders and developers testified that the legislation will mean new roadblocks in a state that ranks 47th in building permits per capita, where anti-growth attitudes are strong, and where home prices are soaring, creating severe difficulties for more and more families seeking homes and businesses seeking employees.

The bill's supporters said it is a big first step toward overcoming huge obstacles, including convincing local voters and property owners to cede some of their rights, potentially, in the name of smarter community development planning, and synchronizing costly infrastructure improvements needed to properly spur growth in targeted areas.

Builders responded by saying local officials are already adept at stopping and slowing development, and critics of current laws say it's up to the Legislature to give the state's 351 cities and towns the teeth to enforce the notion of "home rule" and the power to assess impact fees to cover public costs associated with new development.

Douglas Foy, the top planning and development official in the Romney administration, said zoning bylaws often stand in the way of the type of growth that Gov. Mitt Romney has repeatedly advocated "smart growth" - dense

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growth near existing urban centers and public transit with limits on sprawling development outside those core areas.

Foy said the bill's include many admirable provisions, but he worries that the proposals might restrict badly needed affordable housing production and is concerned that a consensus bill has not emerged on the Hill for so many years. Foy identified grandfathering, permitting, and abutter appeals as critical areas to be addressed within the legislation.

Rep. David Torrisi (D-North Andover) said he was reluctant to change the threshold for adopting zoning bylaw changes from two thirds to a majority, noting the threshold is intended to prevent one group of residents from imposing its will at a lightly attended Town Meeting. Torrisi chairs the Committee on Community Development and Small Business, which heard the bill today along side with the Committee on Municipalities and Regional Government.

Torrisi said he also shares the concern that the bill might restrict the ability of educational institutions, day care centers and human service providers to expand, in light of the state's creation of a new Department of Early Education and its new goal of creating universal pre-school.

Committee Endorses Bills Including Sales Tax holiday and Housing Preservation

The House Ways and Means Committee has advanced 11 bills with revenue implications for the state. Among the bills are proposals to have a sales tax

holiday on Aug. 13, 2005 and to authorize the state to borrow \$200 million for affordable housing production and preservation.

MICHIGAN

House Proposes Securitization

In response to the Governor's proposal to go to the voters in November to seek approval of a \$2 billion bond proposal, the House has offered a bill that would securitize the states' tobacco settlement. Governor Jennifer Granholm's (D) \$2 billion bond proposal was offered to help revitalize the states' struggling economy. In response to her proposal, the Senate passed a bill similar to the Governor's with incentives to entice high-tech companies and research firms to Michigan. The Senate also cut the overall amount of the bond to \$1 billion. Since then, the House's plan to drop any bond proposal and replace it with securitization has been gaining momentum. Michigan would join 16 other states, which have sold their annual payments from the national tobacco settlement.

Budget Talks Moving Slowly

With the House and Senate in summer recess, Governor Granholm has urged the lawmakers to return to the capital to address Michigan's budget crisis. Calling the legislature "extremely unproductive" in a recent letter to all members she tempted them to return and get to work as the economy is in crisis. The Governor continued in her letter to criticize the Republican-led legislature for failing to address the major hurdles facing Michigan's economy. Both

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leaders in the House and Senate responded to the Governor's complaints by stating that although they may not officially be in session, select task groups continue to work on the state's budget.

Tax Proposal on Hold

After months of taking no action on the Governor's tax proposal the Senate passed S.B. 633 and S.B. 634 out of committee and onto the Senate floor. Neither bill looked anything like what the Governor had proposed. Under S.B. 633, beginning in 2007, the Single Business Tax (SBT) rate would be reduced by .1 percentage points a year until the tax was eliminated by 2025. Under S.B. 634, the apportionment rate under the SBT would be converted to 100 percent of sales compared to the current 90 percent sales, 5 percent payroll and 5 percent property.

MINNESOTA

Budget Deal Ends Government Shutdown

Legislative leaders and Governor Tim Pawlenty (R) announced that they had reached a deal July 9, putting a budget in place and ending the state's weeklong government shutdown. The full House and Senate are expected to pass the budgets by the evening of July 13. The Governor and Republican leaders conceded in their insistence upon new gaming revenues. Democrats reportedly yielded their effort to increase taxes for wealthy Minnesotans, foreign-operating corporations and businesses. Democrats also agreed to the Governor's 75 cent-per-pack cigarette fee.

NEW JERSEY

Legislative Update

S-2133, a bill to establish a basic course requirement for zoning and planning board members passed the Assembly. The bill, sponsored by Senator Ronald Rice (D-Essex), would require the Commissioner of Community Affairs, in consultation with the New Jersey Planning Officials, to establish standards for curriculum and administration of a basic course in land use law and planning. The Commissioner would be required to prepare and offer the course itself, or through an outside entity, within six months of the bill's effective date. Once the course is available, prior to being seated as a first-term member or alternate member of a municipal planning board, zoning board of adjustment or combined board as provided by law, a person must agree to take the basic course in land use law and planning and successfully complete the course within 12 months. A person serving as a member or alternate member of a board on the date the course is first offered, and as a condition of continued board membership, must successfully complete the course within 12 months. Exemptions from the course requirement are: the mayor or person designated to serve on a planning board in the absence of a mayor; licensed professional planners; and persons who have successfully completed more extensive courses of study in land use law and planning. The bill now heads to Acting Governor Codey for his consideration.

A-3473, a bill that would conform the New Jersey sales and use tax to the

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requirements of the Streamlined Sales and Use Tax Agreement passed the Senate. The bill, sponsored by Assemblyman Louis Greenwald (D-Camden), was then signed into law by Acting Governor Richard Codey on July 2.

The Streamlined Sales and Use Tax Agreement is one of two components of the sales tax system under development by the Streamlined Sales Tax Project, an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. Forty-two states and the District of Columbia are involved in the project, and New Jersey has been involved since 2001, when the State Treasurer was authorized to enter into multi-state discussions concerning the Streamlined Sales and Use Tax Agreement to provide a streamlined sales tax system.

A-1079, sponsored by Assemblyman Joseph Cryan (D-Union), which would regulate expiration dates and dormancy fees for gift certificates and cards, failed to pass the Assembly. The measure would have required that a gift certificate or gift card sold after the effective date of the bill would retain full unused value until presented for merchandise or would disclose any and all conditions and limitations as provided, however, an exemption was included for bank issued mall cards.

A-3673, sponsored by Assemblywoman Bonnie Watson Coleman (D-Mercer) and Assemblyman Jerry Green (D-Middlesex/Somerset/Union), amends the "Abandoned Properties Rehabilitation Act," and was signed into law by Acting

Governor Richard Codey on June 29. The measure clarifies provisions of the Act that adversely affect the ability of municipalities and others seeking to operate under the Act's provisions.

S-2080/A-3504 was sponsored by Senators Stephen Sweeney (D-Gloucester) and Thomas Kean (R-Union) and Assemblymen Neil Cohen (D-Union), Jon Bramnick (R-Westfield), Reed Gusciora (D-Mercer) and Jeff Van Drew (D-Cape May Court House). The legislation would provide for regional economic impact reports and review by affected municipalities for certain proposed large-scale retail developments also known as the "big box" legislation. The bills remains in their respective committees to which they were referred upon their introduction.

TEXAS

Special Session Called for Property Tax/School Finance

Governor Rick Perry called the Texas Legislature into special session starting on June 21 to address the issue of public school finance and property tax reduction/tax restructuring. The Senate and House have each passed their own versions of public school finance reform and tax restructuring. Conference committees are in the process of adjusting the differences in both bills.

ICSC and other real estate groups have been successful in defeating an expanded definition of passive income that would have subjected passive investments in rental properties to the franchise tax and defeating a proposal to expand the business tax base to include

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Real Estate Investment Trusts. Still on the table is a provision to eliminate the “timely filing” discount for entities that collect and remit sales taxes.

The following is a summary of the House and Senate versions of the tax bill (H.B. 3).

House Version of H.B. 3:

- Reduces the school property tax rate to \$1.23 for the 2005 tax year and to \$1.12 in the out years;
- Allows up to \$0.15 in local enrichment (the phase-in of \$0.05 every two years subject to voter approval is included in HB 2);
- Increases the sales tax rate by 1¢ to 7.25%;
- Expands the sales tax base to computer programming, bottled water, and motor vehicle repair;
- Eliminates the timely filer sales tax discount;
- Increases the motor vehicle and motor boat sales tax to 7.35%;
- Institutes a presumptive value on used car sales;
- Increases the cigarette tax by \$1 per pack and increase other tobacco products by 25%;
- Keeps the current franchise tax but eliminates the “Delaware sub” and “Geoffrey’s” loopholes;
- Allows the attorney general to use outside agents to collect delinquent obligations owed to state agencies, other than those collected by the comptroller.

Senate Version of H.B. 3:

- Lowers the school property tax rate from \$1.50 to \$1.30 in the 2005 tax year; sets the maximum rate at \$1.25 for 2006; and reduces the maximum rate to \$1.10 for 2007 and beyond. It provides for local enrichment of up to 15¢ if authorized by the voters according to provisions in the Education Code added by HB 2.
- Closes the Delaware and Geoffrey loopholes and eliminates the throwback rule. It sunsets the franchise tax on January 1, 2008. A Blue Ribbon Panel composed of 15 members, five each appointed by the Governor, Lt. Governor, and Speaker, to bring a recommendation to the 80th Legislature (in 2007) for a broad-based tax on all business entities (other than sole proprietorships) to further reduce property taxes. The commission would be required to examine all aspects of the taxation of business in the state and recommend a business tax structure that provides equity among businesses and among industries, promotes economic competitiveness with other states, and is fairly related to the benefits, opportunities, and protections provided to businesses by the state.
- Increases the sales tax by one-half cent and expands the sales tax base to include computer repair services. It provides for a \$75 million in sales tax rebates for Line Star Card holders.
- Increases the motor vehicle sales

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tax to 6.75% and increases the boat tax to 6.75%.

- Requires the use of presumptive value for sale of used automobiles.
- Increases the cigarette tax by \$1 per pack thereafter and increases the excise tax on other tobacco products by 16%.
- Increases the tax rate on liquor, wine, beer, malt liquor, and mixed beverage gross receipts by 20%.

Private Property Rights Legislation Filed

There has been much activity in the Texas Legislature in response to the U.S. Supreme Court’s ruling in Kelo et al v. City of New London authorizing governmental entities to use eminent domain powers for economic development purposes even if the concerned property isn’t blighted. Senator Robert Deuell (R-Greenville)

filed S.J.R. 10; Senator Kyle Janek (R-Houston) has filed S.B. 62 and S.J.R. 9; and Representative Frank Corte (R-San Antonio) filed H.J.R. 19 the companion. These resolutions would propose a constitutional amendment to prohibit a political subdivision from taking private property for the primary purpose of economic development and would put the measure on the November Constitutional Amendment ballot. H.J.R. 19 by Frank Corte (R-San Antonio), which proposes a constitutional amendment is on the House calendar this week. A committee substitute to S.B. 62 is moving through the Senate. The substitute creates exceptions for utilities, ports, public roads and other common areas of public use. Now that the Governor has opened the call to the issue, the strategy will be to move the constitutional amendment (S.J.R. 10) from the House and to move the enabling bill (S.B. 62) from the Senate

Upcoming Alliance Meetings

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| ▪ Northern California Alliance Program | San Ramon, CA | September 21 |
| ▪ Western New York Alliance Program | Buffalo, NY | October 6 |
| ▪ New Jersey Alliance Program | Asbury Park, NJ | October 11 |
| ▪ Connecticut Alliance Program | Rocky Hill, CT | November 3 |

University of Shopping Centers

- March 6 – 8, 2006, The Wharton School of the Univ. of Pennsylvania, Philadelphia, PA

Preliminary Program for the 2006 University of Shopping Centers will be mailed to ICSC members in mid-June.

School of Economic Development Classes:

- The Approval Process from Initial Development to Finished Project (**new course**)
- Retail as an Essential Strategy to Economic Development
- Reviving Central Business Districts (**new course**)
- How to Attract Developments that Bring Vitality to a Community
- Retail Opportunities in Underserved Markets
- Attracting Retail Chains to Your Community

To submit items to SCANews, please contact Stephanie Spooner at sspooner@icsc.org.
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