

SEPTEMBER 19, 2005



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



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**\*\*MANDATORY FOR ALL GR 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.  
Contact Judy Laniak at (202) 626-1401 for additional information.

## CALIFORNIA

### *Governor Addresses ICSC Trustees*

Governor Arnold Schwarzenegger (R) met with ICSC Trustees at the Fall Board Meeting in September in Santa Monica. Gov. Schwarzenegger discussed the California budget challenges and his decision to pursue public support through the ballot initiative process in November. Some of the issues covered included “live within our means” budget limits, legislative reapportionment and limits on public employee political contributions. He also expressed frustration with the stagnation of the political climate because of uncompetitive electoral districts.

Gov. Schwarzenegger met with ICSC President and CEO Michael Kercheval and ICSC Chairman Charles Grossman (ING Clarion) prior to his remarks and was introduced by ICSC Western Division Vice President Pat Donahue (Donahue/Schrieber).

The Governor worked with ICSC California members and the California Business Properties Association to prevent a split role tax effort from taking hold in the state earlier this year.

### *“Industry Killer” Bills Die During the Last Night of Session*

A broad and diverse group of statewide business organizations were successful in stopping several bills that would have devastated the California commercial real estate industry as well as the state’s economy. The success of the coalitions that were created to defeat these bills stemmed from a major resurgence of the “Mod” caucus – moderate Democratic members of the California State Assembly with the leadership of certain members that either voted “no” or did not cast an affirmative vote on bills such as S.B. 44 (Kehoe), S.B. 655 (Ortiz), and A.B. 1766 (Dymally).

S.B. 44 (Kehoe, D-San Diego) - would have forced cities and counties to take on and pass on new and redundant air quality management responsibilities and obligations that have little bearing on the goal of improving the state’s air quality.

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Instead the additional responsibilities would have simply added a new complication for already state-burdened general plans.

S.B. 655 (Ortiz, D-Sacramento) - would have created a new statewide regulatory, land use and mitigation program to deal with naturally occurring asbestos. The bill would have required local governments to establish that “no undue hazard” to individuals is present prior to authorizing new projects. This requirement was so vague and difficult (if not impossible) to scientifically verify that it invites future litigation against new development of all types including residential, commercial, retail, road building, mining and farming.

A.B. 1766 (Dymally, D-Compton) - would have undermined the stated purpose of the Enterprise Zone Program – to provide incentives for investment and job creation and retention in economically distressed areas of the state – by limiting the benefits of the Enterprise Zone program to a small sector of qualified employees (essentially only those receiving public assistance), and placing inappropriate restrictions on taxpayers’ ability to claim the state tax credits provided for their investment in Enterprise Zones.

***CBPA Urges Governor to Veto Two Anti-Industry Bills***

The California Business Properties Association (CBPA) had an extremely successful legislative year by neutralizing or defeating dozens of bills that would have been harmful to industry. Unfortunately, two bills opposed by CBPA have found their way to the Governor’s desk. CBPA has

urged Governor Schwarzenegger to veto A.B. 648 (Jones) and A.B. 1622 (Liu).

A.B. 648 (Jones, D-Sacramento) – which would require a development project applicant to identify the person or entity that will own, lease or occupy the project, if different from the person or entity applying for the development permit passed out of the Senate this week. As currently written, A.B. 648 would require information that can and often times does change during the life of a project, which could require continual recirculation of environmental documents. Several business organizations are concerned that the bill seeks to include information that has no relationship to an application for a development project. Such information could enable projects to be opposed based upon who will occupy them, rather than the type of land use or environmental impact of the project.

A.B. 1622 – (Liu, D-La Canada) - would prohibit retentions withheld either from the owner to the general contractor, or from the general contractor to the subcontractor not to exceed five percent of the contract. The fundamental problem with this measure is that state law is attempting to interfere with the private contractual relations between business entities in the absence of a strong public policy to do so. There is a long standing business practice for owners and general contractors to retain payments as a means of financial guarantee in the absence of a bond that the construction will be completed based on the terms of the contract.

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## MICHIGAN

### *Legislature Returns From Summer Recess*

On their first day back from session following summer break, the House passed their plan to provide tax relief for Michigan businesses. However, it is unclear what will happen next on the issue, which has captured the focus of the Capitol over the last several months.

Despite ongoing negotiations with both parties, both Houses and representatives of the executive office, the House Republicans kept their promise of holding a vote on a tax plan before Labor Day. Democratic Jennifer Governor Granholm remained opposed to the House plan and Senate Republicans commented that they need to further review the issue.

The major difference between the Governor's plan and the House Republicans' is that Gov. Granholm's plan would provide a bigger tax cut in most groups and recoup lost revenue through tax increases on other businesses. The Republican plan is a more gradual tax cut to all business with no broad increases and a net reduction in revenue. The House plan also closes a number of tax exemptions to make up for lost revenue.

The House Republican plan, passed on a party-line vote, would give manufacturers a credit toward their Single Business Tax (SBT) equal to 15 percent of the personal property on 2006-2008 with the credit rising to 20 percent in 2009 and beyond.

The SBT gradually would be shifted so that a business tax becomes entirely based on sales. The SBT rate would drop from 1.9 percent to 1.8 percent in 2007 and 1.7 percent in 2008. In 2009, if revenues are forecast to be \$180 million above estimates, the rate would drop by 0.05 percent.

The bills in the package are H.B. 5108, H.B. 4972, H.B. 4973, H.B. 5106, H.B. 5107, H.B. 5095, H.B. 5079, H.B. 5098 and H.B. 4980.

## OREGON

### *Ballot Measure 37 Update*

Ballot Measure 37 requires state and local governments to waive rules that suppress land value or pay the property owners for the impact the rules have on their land. Opposed by Oregon's no-growth advocates, the measure was approved by 61 percent of Oregon voters in November 2004. For years Oregon's inflexible land use laws hindered economic development and increasingly infringed upon Oregonian's individual property rights. The perfect land use storm had been slowly building. By overwhelming supporting Measure 37, Oregonian's sent a message to state and local government that Oregon's "revered" land use system (established in 1973) had imploded, and the time for land use reform had come, few Oregonian's were seeking compensation.

Arguably, had a comprehensive review of Oregon's land use laws been implemented in 2003 and provided some modest modifications to existing land use rules, Measure 37 would not have passed.

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The 2005 legislature, aware of the consequences Measure 37 imposed upon state and local government, was unable to address even the most obvious perceived problems. Those problems include how to fund valid claims for compensation, allow for waivers by public entities to be transferable, and who will adjudicate claims against the state. Polarized by philosophical partisan politics the Republican-controlled House and the Democratic-controlled Senate were unable to reach an accord even following an appeal by Oregon's Democratic Governor to the Senate to concur with the final amended version of a Measure 37 fix. In the Governor's words Senate Bill 1037D "brings a level of predictability and certainty to Oregon's land use process after the passage of Measure 37." The Governor continued, "If we do not pass a bill providing for a uniform claims process throughout Oregon, our numerous public entities will deliver different and conflicting applications and interpretations of Measure 37. The result will increase government costs by bringing about litigation and will challenge the public's confidence in our ability to govern."

S.B. 1037D as amended did provide for transferability, and did establish a uniform procedure for the state and local governments to process Measure 37 claims, and would have been a reasonable fix. Despite the Governor's plea to the Democratic-controlled Senate to concur, the votes were not there.

With no legislative resolution, Measure 37 now moves to the courts. Arguments will be presented in September challenging the constitutionality of the measure. The premise of the challenge is

that the measure violates the state constitution by granting special privileges to property owners based upon the length of time they have owned their land. Predictably there will be additional litigation filed across the state related to the ambiguities the legislature failed to address, including the issue of transferability, protecting neighboring property owners from unanticipated development and what constitutes reasonable development on secondary lands.

If the court overturns the measure, which is a reasonable likelihood given the nature of the Oregon judicial system, the proponents (Oregonians in Action) will inevitably file another ballot measure (the Grandson of 7) providing greater clarity related to transferability and perhaps a financing scheme to fund valid claims for compensation. Given the current frame of mind of the electorate related to the need for land use reform and their disdain for a judicial system that overturned their will a second time, passage of another measure is to be expected.

## TEXAS

### *School Finance and Tax Reform Bills Fail to Pass*

The second called session of the Texas Legislature adjourned without passing legislation on school finance and tax reform. Lt. Governor David Dewhurst (R) cited two reasons that prevented an agreement between the House and Senate. The first is the question of which branch of government should govern the issue. Dewhurst said he felt that the Legislature should change the

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education system and render the court challenge moot. The House members preferred to let the court decide first so the House and Senate could take direction on education reform based on the court's ruling. He said that this fundamental disagreement led in large part to the stalemate over the issue.

The second reason he cited for the failure was special interest lobbyists, particularly those representing the petrochemical industry, who were against tax reforms that broadened the business tax. He said that these lobbies were not effective in the Senate, but were able to gain the necessary leverage in the House to prevent any meaningful reform.

Upon the conclusion of the legislative session without passage of school finance reform or property tax relief legislation, Governor Rick Perry (R) outlined a series of actions he will take to implement education reform using executive authority. Perry also announced that he has directed Education Commissioner Shirley Neeley to raise the minimum teacher salary schedule effective immediately so that 8,000 teachers will receive pay increases.

### ***Legislature Passes Eminent Domain Bill***

In spite of the failure of school finance and tax relief/restructuring legislation, the legislature did pass legislation restricting eminent domain authority of local governmental entities. S.B. 7 by Kyle Janek (R-Houston) and Beverly Wooley (R-Houston) prohibits governmental entities from taking private property for economic

development purposes. Governmental entities include a state agency, an institution of higher education, a political subdivision, or a corporation created by a governmental entity to act on behalf of the entity.

Specifically, S.B. 7 prohibits governmental or private entities from using eminent domain to take private property if the taking:

- confers a private benefit on a particular private party through the use of the property;
- is for a public use that is merely a pretext to confer a private benefit on a particular private party; or
- is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

The bill does not affect the authority of any entity authorized to use eminent domain for:

- transportation projects, including railroads, airports, or public roads or highways;
- port authorities, navigation districts, and any other conservation or reclamation districts that act as ports;
- water supply, wastewater, flood control, and drainage projects;
- public buildings, hospitals, and parks;
- the provision of utility services;
- a sports and community venue project approved by voters at an election held on or before

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- December 1, 2005;
- pipeline operations;
- private gas and electric utilities;
- oil and gas underground storage operations;
- a waste disposal project; or
- a library, museum, or related facility.

S.B. 7 creates an interim legislative committee consisting of five members of the Senate appointed by the Lt. Governor and five members of the House appointed by the Speaker to study the use of the power of eminent domain, including its use for economic development purposes and the issue of what constitutes adequate compensation for property taken through the use of eminent domain, and requires the committee to report its findings to the 80<sup>th</sup> Legislature by December 1, 2006.

## VIRGINIA

### *Eminent Domain Group Meets*

The Virginia Housing Commission's Eminent Domain/Blight Removal/Brownfield remediation Issues Work Group met in Roanoke, Virginia on Sept. 14 to continue with the review of the blight removal and eminent domain work of the Commission begun last year. The Work Group also reviewed legislation and studies referred to the Commission, discussed current issues and development of policy recommendations that will advance a broader Housing Policy for the Commonwealth. The meeting covered an update on the status of Arlington Housing Program Roundtable and a report from the Tax Credit Mapping Sub-work Group.

The group is comprised of Delegates Terrie L. Suit (Chair-R), Jackie T. Stump, (Vice-Chair-D), Bradley P. Marrs (R), Melanie Rapp (R), Gary A. Reese and Senators William C. Mims (R), Mary Margaret Whipple (D), Mamie Locke (D) as well as F. Gary Garczynski, F. Andrew Heatwole and T. K. Somanath.

### Upcoming Alliance Meetings

- |                                     |                 |            |
|-------------------------------------|-----------------|------------|
| • 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

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