



MARCH 13, 2006

STRATEGIC LEADERSHIP SUMMIT

Make plans now to attend the 2006 Strategic Leadership Summit in Washington, DC on March 28-29. This is the meeting to attend if you want to make your voice heard in Congress regarding issues that are important to the shopping center industry. For more information, please contact Judy Laniak in the Government Relations office at (202) 626-1401 or by email at jlaniak@icsc.org.

ARIZONA

Legislative Update

Arizona industry members continue to be part of the small working group trying to negotiate an eminent domain compromise with the leadership of the House and Senate. There are still nine eminent domain bills moving through both houses. However, major stakeholders are getting close to an agreement that will retain cities' ability to use eminent domain for basic infrastructure. The larger concern now is the potential draft ballot referendums that would essentially ban all regulatory takings by cities and towns as well as the State Department of Transportation.

The National Sales Tax Holiday, to take place for one week in August, is moving through the system with industry-backed amendments to make sure that it can occur practically at the store level.

Sales tax reimbursement incentives are an issue industry members are still working on very aggressively. Progress has already been made on the bills that are still moving through the legislature and will continue to work on an acceptable resolution of this issue.

CALIFORNIA

Bill Introduction Deadline Ends in a Flurry

February 24 was the deadline for legislators to introduce bills for the 2006 legislative year and 738 bills were introduced. Those bills, combined with the other 900 bills introduced during January and February, bring this year's total number of bills to more than 1,600. Under the rules of the Assembly and Senate, bills introduced cannot be acted upon for a minimum of 30 days.

Bills to Watch and Oppose

Several of the bills introduced in this session could be harmful to the commercial real estate industry. For example, Senator Richard Alarcon (D-Sun Valley) has introduced his latest anti-big box retail store bill – S.B. 1523; Senator Sheila Kuehl (D-Santa Monica) has introduced legislation aimed at increasing the fee charged by the Department of Fish and Game to review California Environmental Quality Act documents from \$850 to \$2,500; and Senator Denise Ducheny (D-San Diego) has introduced S.B. 1395 which would prohibit a local government from certifying or adopting an Environmental Impact Report, negative declaration, or exemption for a project that alters or otherwise impacts a California Native American prehistoric, archeological, cultural, spiritual, or ceremonial place unless consultation between the local government and the Native American tribe has been engaged and notification of a decision has been provided 60 days in advance to the Native American Tribe.

Court Determines that ADA Activist is Not 'Vexatious Litigant'

U.S. District Court Judge Lawrence Karlton ruled that a disabled activist is not a vexatious litigant for filing numerous complaints alleging property owners for violating the Americans with Disabilities Act. The complaint against Ron Wilson of Citizens Acting for the Rights of the Disabled was brought last year by Pier 1 Imports and Mellon/Pier 1 Properties after Wilson repeatedly sued over access issues at the chain's Fairfield store. In his published ruling, Judge Karlton wrote that Wilson "has satisfied the first requisite for filing suit, that is, he is a member of the class the statute was meant to protect." This decision is the second time Wilson has been cleared of being a vexatious litigant. The first time was in October 2005 in a case involving a San Diego Wal-Mart store. If Wilson had been ruled to be a vexatious litigant, it could have limited future lawsuits from him and require that the cases undergo some type of judicial review before being filed according the Judge Karlton.

Opposition to Proposition 82 Grows

Rob Reiner, the leading advocate for Proposition 82 – the income tax increase to pay for universal pre-school – was dealt a major blow this week when Senate President Pro Tem Don Perata (D-Oakland) came out in opposition to Proposition 82. “Upon reflection, I believe Proposition 82 would become yet another obstacle impeding prudent governance of the state,” Senator Perata stated in a letter to Reiner.

Governor Declares State of Emergency for the State’s Levee System

While California has avoided a disaster matching the magnitude of Hurricane Katrina, the levees and flood control systems must be strengthened to adequately protect people, property and the state’s vibrant economy. In an effort to avoid such a disaster, Governor Arnold Schwarzenegger (R) has declared a state of emergency for California’s Central Valley levee system and plans to spend up to \$100 million from California’s reserve fund for economic uncertainties to repair 24 critical erosion sites in the region.

These sites are the most vulnerable to immediate collapse and could result in loss of life, loss of critical infrastructure, and destruction of property. Industry members support the Governor’s declaration, which expedites critical repairs to protect California communities who remain vulnerable to flooding. Industry members also support the request made by Gov. Schwarzenegger that the federal government declare California’s Central Valley levees in a federal state of emergency, which would allow temporary suspension of some federal regulations during site repairs. This federal declaration would further help California’s communities that are the most at risk for flooding.

California Population Topped 37 Million in 2005

California’s population topped 37,004,000 on July 1, 2005, according to official population estimates released this month by the State Department of Finance. The state’s growth of 1.4 percent, representing 500,000 new residents during the fiscal year, continued the pattern of slower growth rates each year since the 2.0 percent growth in 2000. In the past five years, the state grew by 2.9 million persons for an overall growth rate of 8.5 percent.

NEW YORK

Court Battle over Destiny Project

The city of Syracuse and Destiny USA’s never-ending battle has been turned over to the courts for resolution. Developer Robert Congel is suing the city of Syracuse over refusal to activate a 30-year property tax exemption for the Carousel shopping center and expansion project. The mayor and Congel appeared close to hammering out a compromise regarding the future of the mega mall project. However, the common council recently stated that they will not approve any negotiations between city hall and the Destiny developer. There is one lone dissenter on the council, Patrick Hogan, who represents the 2nd District, who argues that the project could be a valuable asset to the city. His voice may turn the tides. Currently, both sides are submitting proposals and if the mayor makes a decision, it is believed that more councilors will line up to support a settlement.

Senate Majority Unveils Multi-billion Tax Cut Package

The Senate Majority has proposed an \$8.4 billion multi-year tax cut package to return to New York’s taxpayers the state’s surplus funds. Included in the proposal are several property tax cuts, business tax cuts, and economic development initiatives. Specifically, the Senate calls for the expansion of the Empire Zone Program, an important tool that allows for businesses to enjoy tax incentives and benefits in exchange for job creation and community development.

OHIO

Eminent Domain Committee Meets

The first Committee meeting of the new “Eminent Domain Study Committee” was held on February 16. The intent of the meeting was to identify the goals of the committee and to discuss any procedural concerns that the individual members may have. Of particular concern to the co-chairs were the deadline dates for the committee’s recommendations. As specified in the authorization bill, the Committee must submit a general recommendation by May 1, and must submit a specific legislative proposal by August 1. To meet this deadline, the Committee agreed to meet on every other Thursday, as well as holding 4-6 informal discussion sessions with the general public throughout the state.

TEXAS

Special Election in House District 106

The Republicans held onto the District 106 seat in the Texas House of Representatives on February 28, when Grand Prairie insurance agent Kirk England won the special election to fill the unexpired term of Ray Allen (R-Grand Prairie), who resigned. England got 52.86 percent (2,788 votes) to Democrat Katy Hubener’s 46.23 percent (2,438). Although England had a seven point lead, he won by only a 351 vote margin in this low-turnout election. Libertarian

Gene Freeman got .91 percent (48 votes). The three candidates will face off again in the November general election to see who will win the full term that begins in January of 2007.

Taxes and Public School Finance

In December of last year, the Texas Supreme Court released its decision in the West Orange Cove school finance lawsuit. The Court ruled that the system is unconstitutional because it constitutes a state property tax, but is not inadequate or inefficient. The Supreme Court set a deadline of June 1, 2006 for the system to be changed. As a result, the Governor's Texas Tax Reform Commission has been busy holding meetings across the state and has a tentative proposal for an alternative gross margins tax and some other possible tax increases. The Commission's formal report will be issued at the end of March. If you would like additional information on the tax proposals, contact Dana Chiodo at 512-472-5110 or dana@chiodo.org.

Increased Revenue Forecast

Texas elected officials will start a special session this spring with additional resources. State Comptroller Carole Keeton Strayhorn issued the state's financial update in February, stating nearly \$4.3 billion will be "available to be appropriated or re-appropriated." The \$4.3 billion is from increased revenues, decreased expenditures in some state agencies, unspent money allocated to tax and school reform legislation and funds authorized by the governor for budget execution authority. According to the Comptroller, about half the money is free and clear and can be spent immediately. Of the \$4.3 billion, \$1.8 billion remains contingent on successful school reform and tax reduction bills. Since no bill passed last year, the money remains unspent. The funds can be freed up for another purpose but that requires legislative action. Most contend that after payments made to Health and Human Services, the federal government and budget execution by the Legislative Budget Board for a medical school in El Paso and a pharmacy school in Kingsville, elected officials will have approximately \$2.3 - \$3.8 billion to work with during the interim.

UPCOMING DAY AT THE CAPITOL EVENTS

Denver, CO - March 20

Lansing, MI - March 22

St. Paul, MN - April 6

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