



June 19, 2006

ARIZONA

ICSC Faring Well in Contentious Legislative Session

Partisan politics and a gubernatorial election year have made this session an extremely contentious one. Nevertheless, ICSC has been faring well in its efforts on a few key issues:

Weapons Checked at the Door/Access to Restaurants and Bars

Working with the hospitality coalition, ICSC continues to take a leadership role in fighting legislation addressing weapons and bars and restaurants. A very watered-down bill has just been sent to the Governor and signed. It only deals with some activities for public places. All private eating establishments and bars have been excluded.

Eminent Domain

There were 17 bills introduced dealing with eminent domain this session. HB 2675, which was passed by the legislature, would essentially restrict a city's redevelopment activities and even remove their ability to deal with slum and blighted areas. It would thwart any of the industry's efforts to work with the City on redevelopment issues where even minor eminent domain was needed. Governor Janet Napolitano (D) vetoed this bill on June 6, 2006 and prospects for a legislative override appear unfavorable at this time.

The Legislature is threatening to place a very pro-property rights eminent domain issue on the November 2006 ballot. The industry's concern is that if the language of a proposed ballot initiative goes too far and further restricts a city's use of eminent domain for necessary infrastructure, such as streets, water and sewer lines, flood control, etc., development would take a much longer time to complete and cost considerably more money. ICSC is in a coalition with the cities and others to address this issue.

Limitation of Municipal Retail Tax Incentives

ICSC took the lead during the 2005 legislative session to place numerous process improvements into statute which brought more transparency and required proof of economic benefit to cities through the municipal retail sales tax incentive reimbursement agreements. Currently, two tax incentives bills are still alive, but are stopped in the process. One is a bill sponsored by Senator Ken Chevront (D), which would put severe limitations on municipal retail sales tax incentive reimbursement agreements. It has such a narrow definition of what infrastructure could be included in a retail incentive reimbursement agreement that it is unworkable. Although ICSC has communicated to Sen. Chevront that with minor changes his bill could pass, he has been unwilling to accept amendments.

ICSC and representatives from several Arizona cities have met with the Governor's office to request a veto in the event that this bill were to somehow break out and pass. A second bill, sponsored by Representative John Nelson (R) is the industry-preferred alternative.

Commercial Landlords and Telecommunications

On March 29, Gov. Napolitano signed HB 2079 prohibiting any governmental entity from requiring a commercial building landowner to accept telecommunications services from any specific provider. Commercial building landlords must furnish tenants and prospective tenants with a list of telecommunications providers who service the building. This allows the owner to make the choice

rather than being required to allow access to all telecom providers. ICSC has referred to this bill as the best property rights legislation in the country on this issue.

Property Taxes

Considerable attention has been given by the press to the ongoing debate between the legislature and the Governor concerning property tax relief. Several business organizations – the National Association of Independent Office Properties (NAIOP) in particular – have advocated for large property tax cuts. Greater Phoenix Leadership, an organization comprised of corporate leaders involved in the community, has stated that it is more important to invest in transportation and education. Because of the unique tax statutes applicable to shopping centers in Arizona which gives property owners an assessment choice, property tax cuts are not a major issue for ICSC.

CALIFORNIA

Primaries Set Stage for November

As the dust settles from the primary elections (in which only 28 percent of registered voters cast a ballot), California voters now have a clearer picture of the slate of candidates to serve as the state's next Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and Controller. The candidates for Governor – Republican Arnold Schwarzenegger and Democrat Phil Angelides – have wasted no time in drawing the battle lines for the upcoming General Election. November is already shaping up to be a battle of two distinct candidates with two very different philosophies. One thing is certain, the next four months will be filled with political posturing and an overdose of political ads.

Overall, California's business community fared well in the primaries with the election of several pro-jobs candidates – winning their party's nomination in contested primary races. Through the participation of the California Business Properties Association in JobsPAC, California's commercial real estate industry was successful in assisting the following candidates through the primary:

- Assembly District 17 (Tracy) - Cathleen Galgiani (D)
- Assembly District 28 (Salinas) - Anna Caballero (D)
- Assembly District 55 (Long Beach) - Laura Richardson (D)
- Assembly District 58 (Montebello) - Chuck Calderon (D)
- Senate District 20 (San Fernando Valley) - Alex Padilla (D)
- Senate District 30 (Montebello) - Ron Calderon (D)
- Senate District 34 (Santa Ana) - Lou Correa (D)

While the business community did achieve some successes in the June primary, some election results should give industry pause. Groups like the California League of Conservation Voters see the amount of "reliable pro-environment" members in the Assembly increasing from 27 to the mid-30s. In addition, the amount of members that make up the "Mod Caucus" is projected to diminish in numbers. Only time and votes cast will ultimately determine how the dozens of new legislators will deal with anti-business, anti-industry legislation.

Tax Initiative Soundly Defeated

Proposition 82 – an initiative to increase taxes an estimated \$2.4 billion to create a massive new preschool bureaucracy – was soundly defeated this week by California voters. Statewide, 60.9 percent of voters said "no" on Proposition 82, while 39.1 percent voted "yes." A sizable majority of voters in all but two counties rejected Proposition 82. The exceptions were Alameda County (54 percent "yes") and Imperial County (51 percent "yes"). ICSC and the California Business Properties Association opposed Proposition 82 for several reasons, including that the measure would significantly increase taxes on small businesses to fund a specific program of questionable benefit that would actually drive income out of the state and end up decreasing revenues to California's treasury. Industry leaders hope that the lesson California elected officials take from this lopsided

defeat is that California voters recognize the negative implications tax increases can and will have on the state's economic health.

Industry-Killer Bills Set to be Heard

Legislation opposed by the commercial real estate industry is set to be heard next week in legislative policy committee.

Senator Richard Alarcón's (D) SB 1523 is set to be heard by the Assembly Local Government Committee. The bill would require cities and counties to prepare economic impact reports before they approve or disapprove the construction of large retail stores. While the intent of the bill is to promote market competition and economic development in communities, the practical effect of such a measure will be the exact opposite. By requiring the approval of an economic impact report prior to approval of a development project that includes a large retailer, the bill would create a system of lengthy and costly hurdles that these retailers would need to overcome before opening a new facility in a city or county.

SB 1818, also sponsored by Senator Alarcón, will be addressed by the Assembly Judiciary Committee. The legislation would require that a big box retailer must be ordered to pay attorney's fees and litigation expenses to a local government entity if the retailer acted in an "arbitrary and capricious" manner by bringing an action against the local government entity to challenge the validity or application of an ordinance, rule, regulation, or initiative measure that regulated zoning. SB 1818 unfairly singles out one type of project in its ability to challenge a local government's decision in the courts.

Both of these bills send a clear message to retailers across the country that they are not welcomed in California even though communities and shoppers want the option to shop at "big box" retailers and welcome the lower prices.

Commercial Security Deposit Hearing Postponed

The Senate Judiciary Committee pulled AB 1161 from the committee's hearing calendar last week because the committee is said to have serious concerns with the bill. Industry supporters and the bill's sponsor, Assemblymember Leland Yee (D), were surprised by the revelation and were made aware of the committee's concern's only just prior to the scheduled hearing. No opposition had been registered previously in the legislative process and the bill has received tremendous support from the commercial real estate industry. The bill seeks only to put back into place the long-standing and common practice of allowing a commercial real estate landlord to apply bargained-for security deposits to the actual damages the landlord suffers from the termination of a lease as a result of a tenant's default. With the bill no longer being heard June 13 as scheduled, it is anticipated that it will be set for the committee's next hearing June 20.

FLORIDA

Legislative Wrap-Up

The 2006 Legislative Session was notable for its unpredictability – surprising (though long requested) successes and equally startling defeats snatched from the jaws of victory. For example, the common political wisdom forecasted that tort reform relief would remain stalled and relief from overly restrictive growth management regulations and other business and commercial development obstacles were guaranteed. The common political wisdom was wrong. Highlights and lowlights are as follows:

Bills Passed By The 2006 Legislature:

Tort Reform – HB 145

Abolition of joint and several liability - dramatically alters the Florida civil justice system and places

Florida in the category of a pure comparative negligence state. The complete elimination of joint and several liability in any tort case is expected to be reflected in lower property and casualty insurance premiums due to the presumed decrease in settlement and defense expenses.

Growth Management/DRI Process Revision - HB 683

ICSC is on record encouraging the continued streamlining and narrowing of the applicability of the state's Development of Regional Impact process. HB 683 substantially increases the thresholds in all categories for determining whether a project must undergo review as a DRI. Further, the legislation provides for additional exemptions and increases the triggers for additional review in cases of modifications. Additionally a great deal of conversation was initiated concerning the abolition of the DRI process in its entirety, but was not ultimately endorsed by the Governor's office. This major revision of the DRI process has been under consideration for more than five years.

Growth Management/Interlocal Service Boundary Agreement/Florida Impact Fee Act – SB 1194

SB 1194 sets forth new procedures and requirements regarding jurisdictional issues of adjoining local governments, i.e., city to city or city to county and specifically addresses annexations. The requirement for interlocal agreements specifying responsibility for provision of basic services and at what costs should be of benefit in planning future development. Also, the first standards for imposition and usage of impact fees by local governments were enacted by SB 1194. While the provisions of the "Florida Impact Fee Act" were not as comprehensive as those covered by the Model ICSC Act, for the first time requirements for the usage of local, recent data on which to base fees; segregation and accounting of revenues and expenditures of impact fees; audits; and limitations on administrative expenses was enacted.

Eminent Domain - HB 1567 and HB 1569

The Florida Legislature passed HB 1567 which revises existing statutes concerning the use of eminent domain and passed HB 1569, a joint resolution for placement on the 2006 general election ballot to amend the state constitution's eminent domain provisions as a response to the Kelo decision.

HB 1567 further restricts the current usage of takings available in a community redevelopment agency project or in the case of blight or slum conditions as well as the usage in the case of "public use". That is, the Legislation provides for the requirement to make available first to property owners the opportunity to repurchase any surplus property not utilized for a public project after a taking. Also, the statutes now prohibit takings to eliminate blight and slum.

HB 1569 prohibits the transfer of property taken by eminent domain from one private property owner to another unless authorized by the Legislature by a 3/5ths vote. While constitutional experts found this constitutional amendment proposal unnecessary, the Republican leadership found this proposal highly popular among the conservative base and therefore fast tracked its passage. Of course, to take effect the measure must be approved by voters in the November election.

Sales Tax Holiday/School Supplies and Clothing – SB 692

The Florida Legislature passed a sales tax holiday for the period between July 22 - 30, 2006 for books, clothing or school supplies sold for under \$50 per item.

Repeal of Intangible Personal Property Tax – HB 209

HB 209 repealed the imposition of the annual tax on intangibles, i.e., stocks and bonds held by corporations or individuals. This major initiative of the Florida Chamber of Commerce was finally enacted during the 2006 session.

Energy Policy – SB 888

SB 888 is comprehensive legislation based on the Governor's initiative announced in March of this year. Funding and tax incentives for alternative energy usage and development were included. Of primary interest to Florida GAC members, was the inclusion of a PSC sponsored report and analysis

to be undertaken regarding the viability, incentives, and conditions for requiring underground siting of transmission lines. This report is required to be delivered March 1, 2007.

Denial of Development Permits – SB 1112

SB 1112 requires that any denial of a development permit (environmental or building) by a governmental agency be accompanied by a specific citation of the statute or ordinance violated or not met.

Commercial Construction Defects – HB 1139

HB 1139, which expands the process of notice and opportunity to cure a construction defect to both residential and commercial construction, passed over our objections. The final enrolled bill clarifies that the process and its operation as a condition precedent to filing suit is only available if specifically provided for by contract. In other words, if the statutory language is not included in the contract (and the language is not required to be in the contract), then the statutory provisions do not apply. Legislators were not persuaded that a commercial property owner had less bargaining power than a commercial contractor and therefore the placement in statutes of an optimal provision was not viewed as an interference on contract.

Legislation of Interest Failing to Pass:

Constitutional Revision Process – SB 1436 and SB 26

Neither of the two joint resolutions filed by Senator Atwater (SB 1436) and Senator King (SB 26) – that were strongly supported by ICSC and which if approved by voters in the next general election would have increased the requirements to amend the State Constitution – passed. The proposals unfortunately were victims of an internal struggle within the Senate Republican caucus for leadership. Those senators not aligned with Senator Atwater chose to combine with Senate Democrats to block Republican initiatives on constitutional amendments that included increasing the plurality required for passage of a constitutional amendment having a significant fiscal impact on the State budget (SB 1436); restricting the subject matter for which a citizen initiative to amend the constitution is available (SB 26); amending the class size amendment (SB 1150); permitting the issuance of school vouchers to religious institutions (SB 2170); revising/rewriting the entire constitution to remove typographical, obsolete, or other technically extraneous language; and repeal of the repeal of the eight year legislative term limitation.

The only constitutional proposals placed on the upcoming general election ballot by the Florida Legislature will be this year's eminent domain revision and last year's joint resolutions allowing for 12 year terms for legislative office and the increase of voter approval for constitutional amendment from 50 percent + 1 to 60 percent.

Growth Management – HB 1431; HB 7229; SB 1196

Legislation that contained revisions endorsed by ICSC, including clarification of crediting impact fees to proportionate share mitigation and other concurrency exactions and the expansion of concurrency waivers in urban service boundary areas failed to pass. As the primary House sponsor for these proposals is in a state wide race against the Senate President, these legislative initiatives were DOA from their inception. Also, the Governor's Office was lukewarm in its reaction to passage of a growth management "glitch bill" for the 2006 session and suggested at least a one year hiatus before revisions were made.

Accessible Parking – HB 607 and SB 2016

Legislation that would increase a set aside for lift outfitted vehicles and exceed ADA standards remain blocked during the 2006 session and died in committee.

Take Your Gun to Work – SB 206 and HB 129

These measures requiring commercial property owners to permit employees or customers to park with a secured gun in their vehicle and fining or criminalizing those owners refusing to permit such

remain stalled in Committee and died for the 2006 session.

Architects and Engineers – Indemnity from Liability – SB 2060

The offensive provision shielding architects and engineers from liability was removed during committee and the final enacted measure was a technical clean-up of these professionals' practice act.

MASSACHUSETTS

Slate Set for September Primary

The Massachusetts Democratic Party held its convention June 3 to set the slate of candidates for the September primary to determine the party's candidate for Governor. As expected, Deval Patrick got the official endorsement of the convention, but both Chris Gabrieli and Tom Reilly also received the minimum 15 percent of votes to qualify for the primary ballot. It was expected that either one or both would not garner the required votes. Reilly scored a comfortable 27 percent while Gabrieli squeaked by with just over 15 percent, making it a three-way race until the nominee is chosen September 19.

Legislation of Interest Progresses

It is expected that legislation will likely soon be passed that will expedite the commercial permitting process. On May 17, the House passed HB 4968. The Senate passed a different version (SB 2566) June 1. State House leaders say that the permitting bill is a priority and they will work together to iron out differences and get a final bill before the Governor soon.

Also, the Joint Committee on Health Care Financing recently reported favorably on a bill (SB 1311) that would create a task force to study the health effects of toxic mold as found in a wide range of buildings.

MICHIGAN

House Moves Omnibus Budget

The House approved a \$9.195 billion general fund omnibus budget bill for the 2006-07 fiscal year. Republicans touted the bill and focused on education, while democrats blasted the process as an abuse of power.

The bill increased per-pupil spending by \$230 bringing the school aid budget up to \$11.6 billion. In all the House version is \$53 million below the Senate passed version and \$57 million under the Governor's recommendations.

Additional spending in education meant cuts in Medicaid eligibility for most 19 and 20-year-olds and non-citizens.

Economic Forecast: Not Promising

Having just completed the May revenue estimating conference in which very small increases were announced, state economists project continued bad news for Michigan's economy.

Because of Michigan's heavy reliance on the automotive industry the state will continue to struggle even as the national economy grows. As the Big Three automakers continue to lose about 2 percent overall market share annually the state will lose about 25,700 jobs in 2006, in 2007 the losses should be about 9,700. As a result, the unemployment level will average around 7.1 percent.

MINNESOTA

Legislative Wrap-Up

The Minnesota House and Senate adjourned May 21, wrapping up a short and relatively harmonious session. The Minnesota Legislature accomplished two major priorities during the 2006 Legislative Session: the \$1 billion bonding bill, and adjournment one day ahead of the constitutionally mandated adjournment date.

Elected officials agreed to spend a portion of Minnesota's projected budget surplus by dividing it evenly between tax cuts and spending on state programs. On the spending side, the Legislature passed a \$202.5 million budget bill. The other half, \$202.5 million, was devoted to tax cuts.

But the tax bill was most notable for what it did not provide. It did not provide any property tax reductions or rebates for homeowners or businesses, nor did it increase local commercial or industrial property taxes or the statewide property tax. The corporate tax preference for foreign operating companies was not repealed as proposed – a change that would have cost corporations \$308 million over the next three years.

Eminent Domain

Legislation passed that provides new restrictions on condemnation powers held by cities, port authorities, housing authorities and others, while also increasing compensation requirements for most condemnations in Minnesota.

The new legislation greatly restricts the ability to redevelop blighted or contaminated property. The legislation also includes new requirements for going-concern compensation, attorney fees, appraisal costs, and re-establishment costs. Additionally, the courts must review any challenges to the use of eminent domain with a higher level of scrutiny. The legislation is generally effective for new condemnations starting May 20, 2006, but a number of exceptions were made, such as for existing tax increment financing districts and when a city has started a project anticipating the use of condemnation.

Gift Cards

Amendments to put restrictions on gift cards were attempted by Democrat legislators several times during the legislative session. ICSC worked with other affected businesses to stop these amendments from passing. No gift card restrictions were passed this year.

Transportation

Legislators voted last year to put a constitutional amendment on the ballot this fall dedicating 100 percent of the state Motor Vehicle Sales Tax (MVST) to transportation. Currently, only 54 percent of MVST is earmarked for transportation projects. If the constitutional amendment passes, it will put \$300 million per year into transportation and transit projects.

ICSC was part of a Coalition of more than 700 business, road, transit, environmental, labor, local government and other groups who proposed clarifying the MVST amendment. Unfortunately, the proposal did not pass, leaving intact the amendment and ballot language passed last year.

Stadium and Ballpark

The Legislature also surprised many observers by passing legislation authorizing the construction of a new ballpark for the Minnesota Twins and a new football stadium for the Minnesota Gophers. A proposed new stadium for the Minnesota Vikings failed to win approval.

NEW YORK

End-of-Session IDA Reform Package Possible

Over the years, the legislature has created Industrial Development Agencies to increase economic development through incentives such as tax breaks and low interest loans programs for businesses in exchange for job creation and retention, particularly in upstate New York. These agencies and

programs are organized at county, town and village level but regulated by the state.

Recently, the State Comptroller released a report scrutinizing many of the policies and deals associated with IDAs across the state. The report alleged that businesses have been enjoying the benefits of such programs but not sufficiently creating and retaining jobs in their localities. Specifically the report claims 33 percent of the programs have not increased jobs and approximately 33 percent actually reduced jobs. Because portions of this program are set to expire this summer, there is speculation that the Legislature may decide to negotiate a last minute end-of-session reform package to amend the program. Such changes could include; greater transparency, standardized applications, financial caps and accountability. ICSC has been monitoring IDA reform because of its potential impact on our tax increment financing proposal. The stalemate on IDA reform has been cited as an obstacle in achieving complete consensus on adopting TIF.

"Fair Share for Healthcare" Legislation

As previously reported, the "Fair Share for Healthcare" legislation has been gaining attention in the NYS Legislature; this legislation would mandate that all employers with 100+ employees contribute a \$3 an hour premium per employee towards the cost of health insurance. Overall consensus from the sponsors of this legislation is that this bill will not pass either house in its present form. During the next few weeks the proposal is expected to be elevated to leadership for a final agreement.

PENNSYLVANIA

Primaries Oust 16 Incumbents

Sixteen incumbent legislators lost primary races in Pennsylvania, the result of public outcry over the 2005 legislative pay raise vote (legislators subsequently repealed the pay raise in November). The Senate's two top leaders, majority leader Senator David J. Brightbill (R) and president pro tem Senator Robert C. Jubelirer (R), lost their primary races. The legislators had served a combined 56 years in the State Senate. In the House, Representatives Gibson C. Armstrong (R), Roy E. Baldwin (R), Fred Belardi (D), Sue Cornell (R), Teresa E. Forcier (R), Pat Fleagle (R), Frank LaGrotta (D), Dennis E. Leh (R), Stephen R. Maitland (R), Frank J. Pistella (D), Kenneth W. Ruffing (D), Paul W. Semmel (R), Thomas L. Stevenson (R) and Peter J. Zug (R) all suffered defeats.

According to legislative and political sources in Pennsylvania, the leadership direction in the Senate could begin changing almost immediately with the loss of the top leaders - while they do not officially leave office until year's end, there is expected to be a growing and contentious challenge for the top leadership roles during the course of the June budget discussion and November session dates. Also, according to the same sources, many legislators in both houses without primary opponents are now very concerned about the same anti-incumbent anger being expressed at the polls during the general election in November.

TEXAS

Sales Tax Revenue Climbing

Texas Comptroller Carole Keeton Strayhorn reported that Texas received \$1.54 billion in sales tax revenue in May, up 5.8 percent compared to May 2005. Strayhorn sent \$398.3 million in June sales tax allocations to cities, counties, transit systems and special purpose taxing districts, up 15.5 percent compared to last June. Since January, sales tax allocations to local governments are running 15.4 percent ahead of last year.

House Speaker Calls For Property Tax Appraisal Study

Texas House Speaker Tom Craddick (R) is calling on Governor Rick Perry to form a special commission to study soaring property appraisals. The Speaker said that ever-increasing property appraisals trigger bigger tax bills and that it is a statewide problem. He said, "the average person out

there is seeing their appraisals going up and up, and they are leery of promised tax cuts because it's just going to be eaten up by appraisal creep." He said that he also favors disclosure of property sales prices to help make appraisals more accurate (a proposal that ICSC has consistently opposed in Texas). Craddick has asked the governor to appoint an appraisal cap commission similar to the one Governor Perry created in 2005 to study the state's business tax structure. Governor Perry's spokeswoman Kathy Walt commented on the speaker's request saying, "It is something that the governor favors doing and is considering doing."

UPCOMING MEETINGS

Alliance Programs

- Central Florida Alliance Reception Orlando, FL July 12
- 2006 Retail Cities - The Southern Division Alliance Conference Louisville, KY September 5 - 6
- Northern California Alliance Program San Ramon, CA September 13
- Western New York Alliance Program Buffalo, NY October 5
- Connecticut Alliance Program Rocky Hill, CT November 2

University of Shopping Centers

The 2007 University of Shopping Centers will be held March 5 - 7 in Philadelphia on the campus of The Wharton School of the University of Pennsylvania. The preliminary program will be mailed to ICSC members in mid-June. Next year ICSC will begin its 11th school of study: the School of Mixed-Use Development.

SCANews 2006

ICSC Government Relations, 1399 New York Ave. N.W., Suite 720, Washington, DC 20005
Editor: Stephanie Spooner. Email: sspooner@icsc.org
Phone: 202-626-1400. Fax: 202-626-1418