



**July 25, 2006**

## **ARIZONA**

### ***Legislative Session Adjourns***

The Arizona State Legislature ended its session on June 22 and lasted 164 days - twice as long as the 82 days originally predicted.

Partisan rancor and the gubernatorial election cycle made the 2006 session particularly contentious. Numerous controversial issues received attention this year, while nearly ten percent (43) of the 438 bills approved by the legislature were vetoed by the Governor, an indication of the conflict that characterized the 2006 session.

In spite of this, ICSC fared well, maintaining the status quo with regard to both eminent domain and retail tax incentives and the property rights of commercial building owners have been protected from "forced access" by telecommunications providers. In the final weeks of the session, ICSC achieved success in its efforts related to eminent domain, municipal retail development tax incentives, impact fees, and state land trust reform.

### Eminent Domain

Legislators were intent to curb eminent domain abuse in the wake of recent court decisions, introducing 17 bills aimed at restricting the power of eminent domain. The breadth and scope of many proposals extended significantly beyond the parameters of recent Arizona court decisions. These bills contained various restrictions and/or protections in their definitions of "public use" and just compensation. One included the award of attorney and court fees to the defendant in a condemnation case regardless of the outcome. Five of these bills were holdouts until the budget negotiations were completed.

One bill, HB 2675, passed the House 45-7 and the Senate by 19-8. The bill redefined slum area and made it the sole reason for a public taking. This definition of "public use" was to be added to eminent domain statutes, specifically as it relates to the generation of tax revenue or increase in employment as permissible arguments. The bill would have restricted cities' redevelopment activities and removed their ability to deal with blighted areas. It would thwart any of the industry's efforts to work with the city on redevelopment issues where even minor eminent domain authority was needed. Governor Janet Napolitano (D) vetoed this bill in early June.

On the last day of session, a group of legislators, led by Senator Chuck Gray (R), introduced a strike-everything amendment in an attempt to place a referendum (HCR 2002, "Private Property Protection Act") on this year's ballot. It contained much of the same language as HB 2675. HCR 2002 narrowly passed out of the Senate (17-11), but did not receive a vote in the House prior to adjournment.

### Municipal Retail Tax Incentives Limitation

Despite numerous incentive bills being introduced this session, the status quo has been maintained.

Two tax incentives bills, Senator Ken Chevront's (D) SB 1243 and Representative John B. Nelson's (R) HB 2737, were held up in the process but remained viable up to the adjournment. Rep. Nelson's bill was preferred by industry because Sen. Chevront's bill placed severe limitations on municipal retail sales tax incentive reimbursement agreements as to be unworkable. ICSC and representatives from several Arizona cities met with the Governor's office to request a veto if the bill were to pass.

With the help of several cities and moderate Republicans in the legislature, the Senate bill was rejected in caucus and sent back to Rules on June 21, one hour before sine die. The bill never made it to the House floor for a full vote.

#### Development Fees and Taxes

HB 2381 passed the House 31-23 and the Senate by 16-13 but was vetoed by the Governor. In her veto message, the Governor encouraged the stakeholders to develop consensus legislation on the issue.

HB 2381 mandated that cities only use development fees for necessary public services justified by approved zoning or adopted land use plans. Additionally, the bill required municipalities to reimburse a developer if the assessment exceeded the total of all development fees owed. ICSC worked in cooperation with the Homebuilders Association on this bill and committed to work with the cities to reach mutually acceptable terms.

SB 1068 was signed by the Governor on June 28. The bill is effective September 1, 2006 and exempts state and local development and impact fees from state and municipal transaction privilege tax.

Finally, ICSC joined the retail industry in pushing for SB 1152, which would have granted a statewide sales tax holiday from August 1-7 each year. However, this bill failed to pass its house of origin by a vote of 10-17. The analysis of the negative impact to the general fund became an insurmountable obstacle for advocates of the legislation. Estimates of the decrease in general fund revenue collections ranged from \$16.8 to \$21.1 million: a decrease of \$2.2-\$6.5 million in sales tax; and a decrease in individual income tax revenue of up to \$14.6 million as a result of the \$250/teacher direct income tax offset for materials and supplies.

Additionally, any reduction in these collections would result in decreased funding for local governments. If municipalities participated in the sales tax holiday, there would be a further loss of local revenues and cities could only be exempted by adopting an ordinance or an initiative approved by voters.

#### State Trust Land Reform

The 2006 general election ballot is to carry the question of whether to amend various articles of the state constitution to modify the requirement that state trust land must be sold to the highest bidder at public auction. This includes an urban area. Trust land may be used for commercial purposes if the plan was developed in consultation with local government. Trust land within an urban area may be conveyed to a governmental entity for certain easements and public rights-of-way or if it was classified suitable for conservation before January 1, 2005. This amendment is conditional upon Congress amending the Arizona – New Mexico (Statehood) Enabling Act by December 31, 2008. Also this amendment would self-repeal if the Conserving Arizona's Future ballot initiative passes.

#### Budget

Highlights of the final budget include:

- \$345 million to the Department of Transportation for state highway construction

- \$215 million reduction in property taxes over a three-year period
- A reduction of the individual income tax rate by 10 percent over the next two years

## **CALIFORNIA**

### ***No Tax Hikes if Governor is Reelected***

With the battle lines drawn almost immediately after the June Primary Election, Governor Arnold Schwarzenegger (R) is drawing a line between himself and challenger Phil Angelides (D) on issue of taxes.

Last week the Governor declared that he will not raise taxes if reelected. This statement is in direct contrast with statements made by Angelides who has stated that he believes taxes should be raised on the state's highest earners and corporations to balance the budget.

The Governor's comments come on the heels of a public opinion survey conducted by the Survey and Policy Research Institute at San Jose State University that showed Schwarzenegger leading Angelides by seven points in the gubernatorial race and his approval rating at 49 percent.

### ***Governor's Secretary of Business, Transportation and Housing to Resign***

Sunne Wright McPeak, Secretary of the California Business, Transportation and Housing Agency, announced this week that she is resigning to work for a new organization charged with expanding high-speed Internet service to under-served communities. She will continue to be part of the Schwarzenegger Administration until after the November General Election.

## **COLORADO**

### ***Immigration Reform Passed in Special Session***

Colorado's five-day special session on immigration ended with a compromise in the form of HBS 1023 – legislation comparable to the ballot initiative rejected by the Colorado Supreme Court, although it will not go to a vote on the ballot. The Governor and Democratic leadership agreed to language in both HBS 1023 by Speaker Andrew Romanoff (D) and President Joan Fitz-Gerald (D) and HBS 1017 by Representative Judy Solano (D) and Senator Bob Bacon (D).

HBS 1023, due to go into effect August 1, would require anyone over 18 seeking benefits to provide identification proving that they are citizens or legal permanent residents. HBS 1017 requires employers to verify the legal work status of each of their employees, but requires that the state prove that a business showed reckless disregard for the law before levying fines for violation.

The Governor also strongly supported HBS 1018 by Representative Al White (R) and Senator Ron Teck (R), a Republican backed measure that would have required all workers to have a Colorado state identification card. The bill was a part of the Governor's agenda for the special session, but met much opposition on the basis of its potential effects to the economy. The Governor abruptly switched his position and threw his support to HBS 1017.

The death of HBS 1018 drew much criticism of Governor Bill Owens (R) from Rep. White and other Republicans. Many statehouse Republicans also felt that Gov. Owens did not uphold their position in pushing for a ballot measure. Overall, eight House measures and five Senate measures passed during the special session, although majority of debate focused on the three key bills.

## **ILLINOIS**

### ***City Council Considers "Big Box Ban"***

On July 26 the Chicago City Council will vote on a bill that would impose an increased minimum wage and benefits mandate on large retailers. The ordinance, known as "The Big Box Ban" or "Living Wage Ordinance" would phase in a \$10 per hour minimum wage plus an additional \$3 per hour for benefits to any employee working 10 or more hours per week in a store of 90,000 square feet and for companies with more than \$1 billion in gross revenues. In addition, the wage mandate would be tied to inflation, increasing its margin every year:

July 1, 2007: \$9.25 an hour and \$1.50 in benefits  
July 1, 2008: \$9.50 an hour and \$2 in benefits  
July 1, 2009: \$9.75 an hour and \$2.50 in benefits  
July 1, 2010: \$10.00 an hour and \$3.00 in benefits

After 2010, the "living wage" would be raised annually to match the rate of inflation.

## **MASSACHUSETTS**

### ***Session Winds Down***

The Massachusetts State House has been busy as the last legislative session before the next elections winds down. With the last day of session scheduled for July 31, leaders have been busy completing the state budget for FY 2007, which was signed into law July 7. Governor Mitt Romney (R) vetoed about \$600 million from the budget but the legislature has overridden some of his vetoes and is still addressing the rest.

Right now, the biggest news in the state is surrounding the recent fatal collapse of a cement panel in the I-90 tunnel heading to Logan Airport. The collapse, which occurred July 10, has made national headlines. The Legislature, Executive Branch, Attorney General's office, state agencies, and others have all gotten involved. Authority over the inquiry into the accident was granted by the Legislature to Gov. Romney.

### ***"Special Development Districts" Provision Vetoed***

A bill to allow "Special Development Districts" was vetoed this week by Gov. Romney, who cited concerns that the new districts could seize property from private landowners. Proponents of the bill argue the new districts are a way to pay for expensive infrastructure in areas primed for new development.

Under the proposed legislation, the establishment of an SDD would require the approval of both the property owners within the boundaries of the proposed SDD and the host municipality. The SDD would be able to finance needed infrastructure through the issuance of its notes or bonds. This financing would be non-recourse to both the property owner and the municipality. The debt service on the bonds would be paid back through a schedule of special assessments on the real estate within the SDD that has been reviewed at a public hearing and approved by a committee appointed by the host municipality.

Financing under the proposal could be used by developers of commercial or residential projects with large infrastructure needs and be available as a financing mechanism for existing neighborhoods with unmet sewer or water needs if a city or town is unwilling or unable to finance such improvements itself.

Supporters of the bill are hoping to secure an override of the veto before the legislative session wraps up at month's end.

### ***Commercial Permitting Reform***

The Legislature has produced its compromise plan to remove what many business leaders say is the largest impediment to the state's economic growth. Averaging two years, according to some estimates, the process through which the state permits land for commercial development is cumbersome, and slow enough to put Massachusetts behind other states. Local governments have concerns about their prerogative to control development. Last Thursday, the House accepted the conference committee report, with critics worrying that residents' appellate rights weren't being taken fully into consideration. The conference committee tacked onto the House plan language providing for "environmental justice" and compromised on a technical assistance grant size of \$150,000 per community. Also in the bill are provisions: greenlighting projects under appeal if they have been approved locally, broadening the category of small development projects that qualify for expedited permitting, allowing municipalities to target sites for research and development projects, and establishing a statewide permitting board headed by an ombudsman. The Senate plans to address the bill early this week. Gov. Mitt Romney has also pushed for reforms.

### ***House Ways and Means Endorses Sales Tax Holiday***

Legislation marking August 12 and 13 for suspension of the 5 percent sales tax holiday has now cleared two key committees and is ready for action in the House. The House Ways and Means Committee reported the bill out favorably this week following a poll of committee members. The Senate backs the measure, and a House leadership aide said the bill would likely come to the House floor this week. The tax exemption applies to "tangible personal property," not including anything costing over \$2,500, telecom products, tobacco, gas, steam, electricity, motor vehicle, boats and meals. Supporters say the tax holiday is a win-win for consumers and retailers and creates a mid-summer shopping frenzy on par with the day after Thanksgiving. Detractors say the holiday merely concentrates buying that would have occurred anyway, and forfeits state taxes without creating any new economic activity.

## **MINNESOTA**

### ***Transportation Funding Question Approved for November Ballot***

Last year, ICSC joined the Coalition for Minnesotans for Better Roads and Transit to support passage of a Constitutional amendment providing more funding for transportation. The Coalition is made up of more than 700 businesses, labor, local government, construction, transit and environmental groups. Minnesota has fallen \$1 billion a year behind in transportation infrastructure investment and the last gas tax increase was 18 years ago.

The Constitutional amendment passed the Legislature and will be on the ballot this fall to dedicate all Minnesota Motor Vehicle Sales Tax (MVST) revenues to roads and transit. The legislature determined in 1981 that 100 percent of MVST revenues should go to transportation. However, fiscal crises have resulted in almost half of the revenues being siphoned off for other purposes. Passage of the amendment will mean \$300 million a year more for transportation in 2011 when it is fully phased in - the equivalent of a 9 ½ cent gas tax increase.

During the summer, the Coalition for Minnesotans for Better Roads and Transit is beginning its campaign for passage of the MVST amendment. The coalition hopes to raise \$4 million for the effort. The campaign's singular goal is to have 1.4 million voters ready to vote yes on the amendment.

## **NEW YORK**

### ***2006 Session Ends***

After passing the second on time budget in 23 years, the NYS Legislature has adjourned. Some of the end of Session highlights include retirement incentives allowing aged workers of 55

years with 25 years of service to retire without penalty; cigarette tax mandates which require manufacturers to sell only to wholesalers who place stamps on packs, and property tax relief in the form of rebates to homeowners.

In addition, the health care mandate, pushed by the Working Families Party and known as the "Fair Share for Healthcare Act," was defeated. The Senate triumphed on legislation that would allow property taxpayers to receive rebates prior to Election Day; the Assembly successfully defeated the Governor's request to lift the Charter School cap, and the Governor accomplished expanding the DNA database; which would require those convicted of a felony or 18 common misdemeanors to submit DNA samples.

## TEXAS

### ***Rules Process for New Business Tax***

The Texas Comptroller's office is working to develop rules for the implementation and administration of the new gross margins tax that was passed by the Legislature in May as House Bill 3. While the current franchise tax only applies to corporations, the new gross margins tax will apply to all active businesses receiving state law liability protection. Mike Reissig, Director of Tax Administration has asked for input from businesses to help in drafting the new regulations. He said, "Written submissions will be especially valuable for our staff to refer to and consider during the drafting process." Comments should be directed to:

Mike Reissig  
Director of Tax Administration  
Texas Comptroller's Office  
1711 North Congress, Room 310  
Austin, TX 78701  
[Mike.reissig@cpa.state.tx.us](mailto:Mike.reissig@cpa.state.tx.us)  
Tel: (800) 531-5441, ext. 3-4260

The Comptroller's goal is to have written guidelines ready for the study of the 4,000 largest taxpayers that HB 3 requires to be mailed by November 15, 2006. The Comptroller's website also has a franchise tax calculator to help businesses estimate their franchise tax liability under the new statute.

### ***Sales Tax Holiday Set for August***

Texas shoppers will get a break from state and local sales taxes on August 4– 6, the state's annual sales tax holiday. Most clothing and footwear priced under \$100 will be exempt. The sales tax holiday begins at 12:01 a.m. on Friday August 4 and ends at midnight on Sunday, August 6.

## UPCOMING MEETINGS

### ***Alliance Programs***

- 2006 Retail Cities - The Louisville, KY September 5 - 6  
Southern Division Alliance  
Conference
- Northern California Alliance San Ramon, CA September 13  
Program

- Missouri Alliance Luncheon    Polar Bluff, MO                      September 20
- Western New York Alliance    Buffalo, NY                              October 5  
  Program
- Oregon Alliance Luncheon    Portland, OR                            October 19
- New Jersey Alliance            Newark, NJ                              October 31
- 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. Next year ICSC will begin its 11th school of study: the School of Mixed-Use Development.

**SCANews 2006**

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