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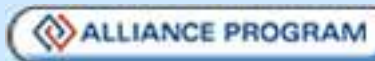
Upcoming Events

The **ICSC Underserved Urban Markets Task Force** will kick off the Underserved Markets Track at ICSC Spring Convention on May 20.

The **ICSC Alliance Initiative** will host a reception at the ICSC Spring Convention on May 21.

The **International Downtown Association (IDA)** is partnering with ICSC in Anchorage, Alaska on May 9 - 11.

[>>read more](#)



April 12
Southern Virginia Alliance
Luncheon Program
Blacksburg, VA

April 18
East Michigan
Alliance Program
Birmingham, MI

April 24-25
Wisconsin Idea Exchange and
Alliance Program
Madison, WI

April 4, 2007



2007 Strategic Leadership Summit

ICSC members turned out in full force for the 2007 Strategic Leadership Summit in Washington, DC on March 27-28. More than 150 ICSC members met with 206 Congressional offices to discuss timely issues including the Employee Free Choice Act (EFCA), Terrorism Risk Insurance, National Catastrophe Insurance, Brownfield Cleanup Incentives and Sales Tax Fairness.

The timing of this year's meeting was particularly important as it coincided with Senator Ted Kennedy's (D-MA) introduction of the Senate version of EFCA, which mirrors the House-passed bill (HR 800). This issue was a top legislative priority during the ICSC summit and ICSC will continue to actively oppose the bill. ICSC members will also be apprised of specific ways to assist this effort, including bolstering the Democratic senators not sponsoring the measure. Currently there are no Republican co-sponsors to S. 1041, and the following Senators are the only Democrats not listed as original co-sponsors: Lincoln (AR), Nelson (NE), Pryor (AR), and Salazar (CO).



Vancouver Parking Tax Eliminated

British Columbia Transportation Minister Kevin Falcon recently announced that transportation and transit reforms would eliminate the controversial parking site tax, saving business tax payers approximately \$25 million (Canadian) per year. This tax, imposed in 2006 by TransLink, the provincial transportation authority, was used to fund provincial transportation and transit projects. Businesses in British Columbia were faced with the responsibility of collecting this burdensome and regressive tax, and worked aggressively to abolish the tax. ICSC and BC businesses applauded the actions of the Transportation Minister. It is anticipated that the Minister will introduce legislation in May 2007 to eliminate this regressive tax.

Canadian ICSC members worked diligently with other organizations and public officials to put an end to this unfair tax.

April 26
Texas Alliance Program
Dallas, TX

June 21 (tentative)
Middle Tennessee Alliance
Program
Location TBD

October 5
Northern California Alliance
Program
San Ramon, CA

November 1
Connecticut Alliance Program
Rocky Hill, CT



Climate Change Working Group Formed

ICSC has formed a Working Group within the ICSC Environmental Subcommittee to study climate change issues and how they are likely to impact the shopping center industry. The ICSC Research Department is also working to analyze the potential impact of various legislative proposals. Given the lack of accurate knowledge and the potential for significant increases in the costs of electricity and transportation fuel, this could be one of the most important issues over the next several years for the industry.

Corps of Engineers Drafts Regional Wetlands Revision

The Mobile District Office of the US Army Corps of Engineers has drafted a Regional General Permit for southern Mississippi that significantly expedites the process for obtaining a Section 404 permit (which is required to develop or rebuild in an area with "wetlands"). Although this is in response to the huge backlog of projects resulting from the devastation of Hurricane Katrina, ICSC believes the principles should be applied more broadly and is working to promote the provisions across the country.

State News

- The Massachusetts Supreme Judicial Court issued a ruling against NorthPoint, a Cambridge development, saying the Department of Environmental Protection (DEP) improperly exempted NorthPoint from the permitting process for coastal developments. Many properties have been exempted by DEP since 1990 and the ruling could create a precedent that would harm developments near the coast. The Court argued that only the Legislature had the authority to grant exemptions. Governor Patrick promptly filed a bill, H.B. 3757, that would retroactively approve all exemptions granted by DEP and give it the authority to do so in the future. The bill is awaiting a hearing by the Joint Committee on Environment, Natural Resources, and Agriculture.
- Massachusetts Speaker of the House Salvatore DiMasi (D-Boston) recently filed a comprehensive energy bill, H.B. 3965, which pushes for alternative energy sources and energy independence throughout Massachusetts. The bill, referred to as the Green Communities Act of 2007, is pending consideration in the Joint Committee on Telecommunications and Utilities.
- The Texas Senate has passed S.B. 12 (Senator Kip Averitt, R-Waco) that would make several changes to the Texas Emissions Reduction Plan and the Low-Income Vehicle Repair Assistance Program. The programs are designed to reduce on- and off-road mobile emissions, the primary source of nitrous oxides (NOx) in the state's non-attainment areas.



Growth Management

State News

- As expected, Arizona State Senator Ken Chevront (D-Phoenix) has introduced two tax incentive striker bills, S.B. 1350 and H.B. 2515. The legislation has gained momentum because of the perceived abuse in the media of a development agreement made by the City of Phoenix with the CityNorth shopping center development. This agreement has caused a perception that cities are not responsible initiators of development agreements and the state should step in to solve the problem. ICSC has taken the lead with the League of Cities in opposing the legislation.
- The Maryland House of Delegates recently approved legislation that would impose development fees for new residential and commercial construction and other impervious surfaces such as parking lots. Under H.B. 1220, the revenues collected from the fees would be deposited into the Chesapeake Bay Green Fund, which would be used for Bay restoration activities and smart growth initiatives. The bill will now be considered in the Senate, where it has a difficult time receiving a floor vote, as President Thomas V. Mike Miller (D) has stated that he will not consider revenue-raising legislation this session unless such legislation addresses next year's projected \$1.5 billion budget shortfall. The bill, however, has the support of Governor Martin O'Malley (D), as well as numerous environmental groups.
- In Massachusetts, the Executive Branch is looking to speed up the permitting process by labeling communities interested in development as "growth districts" and then offering expedited permitting to employers interested in expanding there. The proposal is expected to be ready this spring.
- In New Jersey, ICSC members are lobbying in support of A.B. 3870 and S. 457, which would eliminate the unfair and inequitable practices under the Time of Decision rule. Under the Time of Decision rule, municipalities may change zoning ordinances mid-stream. This is an open-ended and ambiguous provision that increases the time and costs associated with getting a project approved.
- The Nevada Legislature has seen several measures introduced addressing eminent domain in an effort to circumvent the "People's Initiative to Stop the Taking of Our Land" (PISTOL), a ballot question that received 63% of the vote during the 2006 election. PISTOL will be resubmitted to the voters at the 2008 General Election, and if passed, would be enrolled. Several legislators have introduced bills to bypass PISTOL, which is seen as overly restrictive. One of the bills receiving bipartisan support of the Legislature and the support of the authors of PISTOL is A.B. 102, sponsored by Assemblyman William Horne (R). The bill

prohibits the exercise of eminent domain to acquire property if the entity acquiring the property plans to transfer any interest to a private entity and/or the primary public benefit of the acquisition is economic development.

- Several eminent domain bills are under consideration by the Texas Legislature. H.B. 1494 by Representative Bill Callegari (R-Katy) is being referred to as the "Landowners Bill of Rights." It would require the Attorney General to prepare a written statement labeled "Landowner's Bill of Rights" for landowners involved in the eminent domain process and make the statement available on the agency's website. It has been reported favorably from the House Land and Resource Management Committee. Three other bills are pending before the same committee: H.B. 1054, sponsored by Representative Rob Orr (R-Burleson), which would require a condemnor to pay the costs for an eminent domain proceeding, any reasonable attorney's fees incurred by the property owner, and additional damages of 10% if a court awards more than 20% of the amount the condemnor offered to the property owner prior to the start of a proceeding; H.B. 1409 by Representative Robby Cook (D-Eagle Lake) which would require condemnors to disclose all appraisals relating to the property, would allow juries to consider the expected value of a property that will be used to generate revenue, and which would require condemnors to pay the property owners attorney's fees and expert witness fees, if the court awards a higher amount of damages than was originally offered; H.B. 2006 by Representative Beverly Woolley (R-Houston) which would require an entity prior to exercising the power of eminent domain to make a bona fide good faith effort to acquire the property by voluntary purchase, and which would allow special commissioners in a condemnation proceeding to consider the value of the property to be condemned including any evidence that a property owner would consider in a negotiated transaction.
- A bill that would have further regulated large-scale retail development was derailed in the Vermont Legislature by a Senate Committee after a move to table the bill was made by the author of the measure. The bill, S. 66, has been a perennial issue in Vermont and if approved, would have required a developer to obtain a conditional use review and fund an independent regional or community impact study for retail development of 75,000 square feet or more. While there was widespread support on the committee for enactment of the bill, Senator Vincent Illuzzi (R, Essex-Orleans) said he tabled his own bill because there was not sufficient time to devote to the matter and municipalities already have the ability to closely regulate large-scale retail under existing regulations.
- Virginia Governor Tim Kaine (D) made substantial changes to the transportation funding bill, H.B. 3202, passed by the General Assembly in early March. The amendments

address three issues: ensuring that the regional plans in Northern Virginia and the Hampton Roads area are workable and acceptable to local elected officials; ensuring that rural areas get a fair share of transportation dollars; and ensuring that core services are protected and that the debt contained in the package is supported in a fiscally responsible manner. Additionally, the amendments expand the scope and application of transportation impact fees for by-right commercial and residential development in communities with growing population, which will encompass about 75 communities across the state. The bill will now be returned to the General Assembly, who may accept or reject Governor Kaine's revisions during the April 4 one-day "veto session." Should the Assembly refuse to accept or make further changes, the bill would go to the Governor for his signature or veto.

- In Fairfax County, VA, ICSC members testified at the Planning Commission hearing in late March and were successful in obtaining a deferral on the proposed big box zoning ordinance until the next meeting on April 4. ICSC members will continue to work with planning staff on compromise language.

➤ Insurance

ICSC Organizes NatCat Coalition



In response to the insurance crisis being experienced in the Gulf South, ICSC has brought together numerous groups including other policyholder and local economic development groups to create the "Natural Catastrophe Policyholders Coalition." The mission of the coalition is to share information, develop policies and promote solutions to ensure the availability and affordability of catastrophe insurance to both homeowners and businesses.

State News

- Mississippi Governor Haley Barbour (R) approved legislation in March intended to provide relief from increased insurance premiums for business and homeowners in the state after Hurricane Katrina. H.B. 1500 allocates \$80 million to the Mississippi Windstorm Underwriting Association Reinsurance Assistance Fund (known as the "Wind Pool") over the next four years from revenues collected for the insurance premium tax. The money is to be used to defray expenses and costs for reinsurance. The bill was heavily pushed by the Gulf Coast Business Council.
- There have been several proposals filed in the Texas Legislature to improve access to insurance in coastal areas.

H.B. 1865 by Representative Craig Eiland, (D- Texas City), which would establish a system for payment and funding of excess losses to insurers in disaster areas. Representative John Smithee (R-Amarillo) filed a bill requiring the Texas Department of Insurance to create an incentive program to minimize the use of the Texas Windstorm Insurance Association as a means to obtain insurance. H.B. 3272 by Representative Eiland, which would establish and fund the Natural Disaster Catastrophe Fund to protect and maintain insurance capacity in the state. S.B. 1027 by Senator Rodney Ellis (D-Houston), which would expand the Fair Access to Insurance Requirements plan to deliver commercial property insurance and sets maximum liability limits for commercial property and mandatory coverage scenarios. S.B. 1473 by Senator Mike Jackson (R-Pasadena) which would require an insurer write the same percentage of property and casualty insurance policies in the seacoast territory that it writes in the rest of the state.

Workforce

State News

- Two bills relating to retention (H.B. 2406) and indemnification (H.B. 2607) have moved through the Arizona House of Representatives with the idea there would be a consensus between the owners and subcontractors during negotiations in the Senate. Negotiations fell apart after one meeting and the bills have lost considerable momentum. These bills have been run every year since 1999, and have failed to pass each year. ICSC has asked the Chair of the Finance Committee, Senator Pamela Gorman (R), to not give the bills a hearing.
 - Governor Bill Richardson (D) of neighboring New Mexico signed into law S.B. 324, sponsored by Senate President Pro Tempore Ben Altamirano (D) on March 23. The bill increases the minimum wage from the current \$5.15 an hour to \$6.50 in January 2008 and \$7.50 in January 2009. The issue was considered a priority by Governor Richardson, who has continued to campaign to become President in 2008.
 - Legislation sponsored by Texas State Representative Norma Chavez (D-El Paso) was reported favorably as substituted from the House Economic Development Committee. H.B. 49 would set the state's minimum wage at \$6.25 an hour beginning on September 1, 2007 and beginning September 1, 2008, the minimum wage would be increased to \$7.25 per hour or the value for the federal minimum wage, whichever is greater at that time.
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Other Legislative Issues

Carried Interests May be Targeted by Tax Committee

Working in conjunction with the Real Estate Roundtable, ICSC is closely watching possible revenue raisers being considered by the Senate Finance Committee. With ongoing Congressional concerns regarding executive compensation and unregulated industries such as hedge funds and private equity funds, the Finance Committee is considering increasing tax rates on carried interests to provide offsets for new government spending, often referred to as pay-as-you-go or pay-go rules.

Under the growing sentiments of the Senate Finance Committee, carried interest should be treated as a fee-for-service, not a return on investment. Under the possible proposal, gains on carried interests would be treated as ordinary income (with a maximum 25 percent tax rate) as opposed to the current treatment as capital gain (with a maximum 15 percent tax rate). This would be a fundamental change in partnership taxation and could have serious implications for real estate partnerships.

State News

- ICSC Government Relations State Committees completed Day at the Capitol Events in Florida, Maryland, Michigan, Minnesota, Ohio and Texas. In addition, the Connecticut ICSC GR Committee is planning an upcoming legislative event.
- The issue continuing to dominate the attention of the 2007 Florida Legislature is the creation of legislation and a proposed constitutional revision to provide property tax relief and reform. On March 22, the House Policy and Budget Council voted out PCB 07-01, a Joint Resolution proposed for voter approval this year that would provide that each county and school board in the state hold a referendum seeking voter approval on the replacement of all homesteaded ad valorem revenues with an increase of the sales tax collected in that county by 2.5%. Additionally, taxes on all properties for 2008 would be rolled back to 2004 levels (assuming no improvements or new construction). Reports from the Governor's Office and the Senate continue to hold the House proposal with little regard and little chance of success. The Senate Republican majority has yet to announce its proposal, but Senate Democrats intend to unveil their plan on Tuesday, March 27. This proposal is supposed to include doubling the current homestead exemption, extending the cap on annual assessments to non homesteaded properties, limiting portability of lower assessments, limiting some local government spending and enhancing rights in taxpayer appeals.
- Illinois is considering two bills, H.B. 728 and S.B. 445, which would increase the state's transfer tax on a graduated basis. If passed, these bills would have a disproportionate impact

on commercial real estate. ICSC members in Illinois are e-mailing letters of opposition to their state legislators.

- The Maryland House Environmental Matters Committee chose not to vote on MD H.B. 1110, effectively killing the bill. The bill would have limited CAM charges and mandated audit right for tenants. ICSC's Maryland GR Committee's effort to coordinate meetings and calls with legislators was instrumental in the defeat.
- The budget crisis continues in Michigan. Massive budget cuts were approved and Governor Jennifer Granholm's (D) tax proposal, which included a 2% sales tax on services, was defeated in the Senate. However, it is unclear how the Senate will resolve the ongoing budget crisis. The approximately \$344 million in cuts is far short of the \$900 million in cuts required for the current '06-07 budget to be balanced. Additionally there is a projected \$1 billion shortfall in the '07-08 budget. Until Governor Granholm and the Legislature negotiate these budget issues, very little progress will take place in other policy areas.
- Two bills sponsored by Representative Paul Condino (D) pending in the Michigan Legislature would put in place a new method of taxing commercial rental property by exempting such property from general ad valorem property taxes under the General Property Tax Act, and levying a new specific tax on that property instead. H.B. 4376 would amend the General Property Tax to exempt commercial rental property beginning December 31, 2007. H.B. 4375 would create a new act, the Commercial Rental Property Specific Tax, to impose the specific tax on commercial rental property. In general, the bills do not appear to treat commercial rental differently from current law. However, the bills appear to address the Michigan Supreme Court's May 2002 decision in *WPW Acquisition v. City of Troy* (466 Mich 117, Docket No. 118750), in which the court said that an increase in value in a property's occupancy rate could not increase the property's taxable value beyond the constitutional assessment cap.
- The Minnesota Legislature is debating language that would prohibit expiration dates and service fees on gift certificates and gift cards. At this time, the House language has been amended to exclude debit cards or other legal access devices used to access a deposit account and cards issued by a federally chartered or state-chartered bank, bank and trust, savings association, or credit union, or by an operating subsidiary of any of them. Only single-store gift cards that have expiration dates or charge service fees will be affected by the current House language. The Senate bill is set to be heard this week and will likely follow the House lead.
- New Jersey Assemblywoman Valerie Vainieri-Huttle (D) introduced A.B. 4116, legislation which would establish qualifications for zoning enforcement officers. This

legislation would professionalize the position of a zoning enforcement officer by establishing a certification program for the position and by establishing State oversight over such officers. Under the bill, after a transition period of at least one year, a person could not be appointed, reappointed, or continue to serve as a zoning enforcement officer, defined in the bill as a person authorized to issue permits, certificates or authorizations under the Municipal Land Use Law, unless that person has been issued a zoning enforcement officer certificate by the Department of Community Affairs. This legislation was referred to the Assembly Housing and Local Government Committee.

- Last month ICSC New York Government Relations Chair Adam Ifshin led a lobbying day at the Capitol to advance ICSC's proposal to authorize Tax Increment Financing (TIF) for municipalities across New York State. The purpose of this legislation is to provide municipalities with a tool to help attract and advance local economic development projects. Specifically, the bill authorizes a mechanism which would allow the redirection of increased tax payments on a given real estate parcel, for the payment of the debt service incurred for certain infrastructure improvements. ICSC's TIF proposal has received endorsement from the New York State Realtors Association and the New York State Builders Association. Legislation of this type exists in at least 17 other states and would benefit New York State's overall economic development.
- Tax issues remain at the top of ICSC's agenda at the Texas Legislature. At ICSC's request, Representative Brandon Creighton (R-Conroe) filed H.B. 2985, which would exempt flow-through charges in triple net leases from the franchise tax. ICSC is participating in a coalition working against several mandatory sales price disclosure bills.
- Washington Governor Christine Gregoire (D) signed a bill that would make the state's tax structure consistent with the streamlined sales and use tax agreement. S.B. 5089 was approved by Governor Gregoire on March 22. The Governor, who requested the bill's introduction, stated that it "levels the playing field between in-state and out-of-state retailers."

International Council of Shopping Centers

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