



July 2007

Schumer Amendment Update

The Senate passed a version of HR 6, the "Creating Long-Term Energy Alternatives for the Nation (CLEAN Energy) Act of 2007," on June 21 after wading through more than 200 amendments. Fortunately, Senator Charles E. Schumer (D-NY) was unable to convince the Senate to consider his amendment to impose a single national energy efficiency standard on all state and local building codes. ICSC helped educate Senators on the potentially harmful impact of this proposal. However, identical language to the Schumer proposal has been introduced in the House Energy and Commerce Committee. ICSC, supported by its real estate allies, met with Committee Chairman John Dingell (D-MI) prior to the full Committee consideration of the proposal.

TRIA Extension Legislation Moves Forward

On June 18, 2007, the House Financial Services Committee led by Congressman Michael Capuano (D-MA) introduced HR 2761, the Terrorism Risk Insurance Revision and Extension Act of 2007, with 23 cosponsors. The legislation would extend TRIA for 10 years, add life insurance and include domestic acts of terror, and would also provide NBCR coverage. ICSC supports this legislation because it will bring stability to the marketplace and acknowledges the significant threat that non-conventional weapons pose to our country.

The Bush Administration has responded in opposition to the 10-year, or long-term, extension for TRIA and any expansion of the program as included in HR 2761. The administration believes that the federal government's role in the market should be minimal and that the private sector is capable of taking on increasing amounts of terrorism risk. However, the Honorable Eric R. Dinallo, Superintendent, New York Insurance Department, has expressed strong support for this legislation and pointed out that the construction and real estate markets need certainty/longevity of TRIA extension, in fact, a 15-year extension would be better than 10 years.

With few exceptions, the positions of the members of the committee were divided along party lines. Republicans echo the Administration's position of a shorter timeline; Democrats point out that terrorism is an act of war against the United States and believe the government should accept some of the risk and help solidify the markets with a terrorism backstop.

According to ICSC Trustee, Central Division Vice President and Chair of ICSC's Economic Policy Subcommittee Elizabeth Holland, of Abbell Credit Corporation, "A Federal terrorism insurance backstop provides the commercial insurance markets with just enough certainty to accurately



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October 5: Northern California
November 1: Connecticut

price the potential loss resulting from an essentially unpredictable act." Because commercial lenders require this coverage for most commercial properties across the country, regardless of geographic location, market certainty is critical for our industry.

House Ways & Means Members Introduce Devastating Legislation for Commercial Developers

Representative Sander Levin (D-MI) along with Chairmen Charles Rangel (D-NY) and Barney Frank (D-MA) and Ways and Means members Representatives Pete Stark (D-CA), Jim McDermott (D-WA), John Lewis (D-GA), Richard Neal (D-MA), Earl Pomeroy (D-ND), Stephanie Tubbs Jones (D-OH), John Larson (D-CT), Earl Blumenauer (D-OR), Ron Kind (D-WI), and Bill Pascrell (D-NJ) introduced legislation on June 22 which will significantly impact ICSC members operating as partnerships or LLCs. Specifically, HR 2834 provides that any income received from a partnership, capital or otherwise, in compensation for services is "ordinary income" for tax purposes. Currently, general partners who take a share of the funds' profits in exchange for human capital, known as "carried interest" are able to receive compensation for these services at the 15% capital gains tax rate rather than the "ordinary income" tax rate by virtue of the existing partnership structure. Under the bill, those who receive a carried interest as compensation will pay regular income tax rates rather than capital gains rates on that compensation. The capital gains rate will continue to apply to the extent that the managers' income represents a reasonable return on capital they have actually invested in the partnership.

HR 2834 affects all investment management firms without regard to the type of assets, whether they are financial assets or real estate. The test is the form of compensation, not the type of assets the firm is managing, its investment strategy, or the amount of compensation involved. The Ways and Means Committee is scheduled to hold a hearing on the issue in July.

CALIFORNIA

- In California, a bill that would mandate all commercial buildings be built to LEED Gold environmental standards continues to advance through the Legislature. A.B. 888, sponsored by Assembly Member Ted Lieu (D-Torrance), is proposing the requirement for all commercial buildings over 50,000 square feet by 2012. The bill also shifts the development of building codes, under the guise of "green building standards" away from the Building Standards Commission, which considers cost impact in its development of standards, to environmental regulatory agencies, which have no experience in the development or adoption of building standards. The bill is pending consideration in the Senate Environmental Quality Committee after passing the Assembly on June 5 by a vote of 43-33. The California Business Properties Association, ICSC's day-to-day representatives in California, have built a coalition of over 14 major associations and are working to stop or alter the measure.
- ICSC was well represented by members at the annual California Commercial Real Estate Summit (CCRES) held in Sacramento June 12-13. Attendees met with state legislators, Governor Arnold Schwarzenegger's (R) staff and others to network and discuss issues impacting commercial real estate in California.



Government Relations Leadership Meeting
Nov. 4-6, 2007
Hyatt Grand Cypress Hotel
Orlando, FL



Strategic Leadership Summit
March 4-5, 2008
Washington, DC

COLORADO

- Proponents of a proposed ballot initiative in Colorado referred to as the "Higher Education Funding Fee on New Construction" may begin gathering signatures to put their proposal on the November 2007 ballot. The proposal would assess a 1% higher-education funding fee on new construction projects in order to provide additional funding for the state's public colleges and universities. The fee would be assessed on the combined estimated cost of a construction project as determined by a planning and zoning department and the current actual value of the improved land for such a project as determined by the assessor. For the initiative to be eligible for placement on the November ballot, 76,047 valid signatures must be submitted to the Secretary of State by August 6.
- Colorado Governor Bill Ritter (D) signed legislation on May 30 that would affect workers' compensation insurance in the state. S.B. 258, sponsored by Senator Peter Groff (D) and Representative Joe Rice (D), makes several changes to workers' compensation law. While this legislation was portrayed as a procedural bill, it makes a substantial change to current law in that it will be virtually impossible for employers to pay for expert medical testimony related to workers' injuries.

CONNECTICUT

- On June 4, Connecticut Governor M. Jodi Rell (R) approved provisions of a bill that included requirements for new construction and renovations of state facilities to meet certain "green building" standards. The measure's approval was the culmination of a two-year effort led by Speaker of the House James Amann (D) to pass a comprehensive energy bill. Lawmakers worked on draft legislation for the past two years and many of the provisions included in this bill were introduced in other legislation previously debated during the session. However, Governor Rell vetoed several provisions of the bill relating to funding programs to help low income residents pay for fuel and promote energy conservation.

MAINE

- Maine Governor John Baldacci (D) signed a bill on June 20 that would affect the construction of large retail developments in the state. The bill, L.D. 1810, is being referred to by its sponsors as the "Informed Growth Act," and requires an applicant for a permit to build a retail development larger than 75,000 square feet to pay for a comprehensive economic impact study, a public hearing and related municipal staff support.

MASSACHUSETTS

- Although there is much talk about the filled tidelands/Chapter 91 bill (H.B. 3757) filed by Governor Duval Patrick (D), the Legislature has yet to take it up for consideration. If the bill is not passed, many developments located in filled tidelands could be forced to apply retroactively for environmental permits, beginning in perhaps August or September. Governor Patrick's bill, which would restore the status quo after being challenged by a Supreme Judicial Court decision, enjoys the support of Senate President Therese Murray (D-Plymouth); however, House Speaker Salvatore DiMasi (D-Boston) is skeptical. Speaker DiMasi appears to be in favor of restoring the legislature's oversight of the permitting process, which had been the domain of the Department of Environmental Protection until the Supreme Judicial Court decision placed it into question in February.
- Governor Patrick issued an Executive Order on June 20 that formally established his Development Cabinet with the goal of improving development in the state by facilitating coordination between state agencies. Along with the governor, the cabinet will include the Lieutenant Governor, the Secretary of Administration and Finance, the Secretary of Energy and Environmental Affairs, the Secretary of Housing and Economic Development, the Secretary of Labor and Workforce Development, the Secretary of Transportation and Public Works.
- The Massachusetts House and Senate have yet to resolve their differences on competing security breach bills, H.B. 4018, sponsored by the Joint Committee on Consumer Protection and Professional Licensure, and S.B. 2236, sponsored by Senator Michael Morrissey (D). A conference committee has been appointed by House and Senate leadership to finalize a compromise bill. The House conferees are Representatives Michael Rodrigues (D), William Straus (D), and Donald Humason (R). The Senate conferees are Senators Morrissey, Stephen Brewer (D), and Bruce Tarr (R). · On June 12, the Massachusetts General Court's Special Commission to study the tax code voted 8–7 in favor of adopting an interim report that recommends a "check the box" policy change, a move that would raise an expected \$170 million per year from business taxes. The Commission was formed as a result of Governor Patrick's "tax loopholes" bill, H.B. 3756, failure to gain support.
- Also in Massachusetts, Governor Patrick's "Municipal Partnership Act," H.B. 3749, has received increased attention now that the budget process is almost completed. One provision of the expansive bill that has not received favorable support in the House would allow municipalities to charge a meals tax of up to 2%, as well as allowing a 1% increase of the hotel room tax, if the municipalities so choose. The provision enjoys more support in the Senate but without House support, the bill stands little chance of becoming enacted.

MINNESOTA

- Minnesota Governor Tim Pawlenty (R) vetoed the Omnibus Tax bill on May 30—nine days after the legislature adjourned. The bill included funding for the proposed expansion of the Mall of America, which was requesting \$181 million for public improvements surrounding the mall, including the addition of an 8,000 space parking garage. While

Governor Pawlenty is supportive of the project, he vetoed the bill over an inflationary policy provision he was unable to line-item veto. Both business and labor groups are pushing the governor for a one-day special session to pass the tax bill and to push the Mall of America expansion forward. Governor Pawlenty has said he is not opposed to a special session.

NEVADA

- Nevada Governor Jim Gibbons (R) signed legislation that revised existing laws regarding tax incentives for new commercial construction that attained a Silver LEED certification by the U.S. Green Building Council. The bill, A.B. 621, reduces the amount of both property and land use tax abatements for the construction of buildings designed in accordance with LEED standards. The tax abatements were provided in a law passed in 2005; however, initial state estimates for lost revenues was seriously underestimated and legislators sought to revise the tax incentive structure to address the state's budget constraints.

NEW HAMPSHIRE

- New Hampshire Governor John Lynch (D) approved legislation on June 20 intended to attract new business, assist in the expansion of business and retain existing business in the state. S.B. 97 dedicates up to \$1 million a year from the Unemployment Compensation Trust Fund toward job training. The bill was considered a priority by the Governor and received the support of the Business and Industry Association of New Hampshire, the state Departments of Resources and Economic Development, Labor and Employment Security, the New Hampshire Community Technical College System and the Workforce Opportunity Council.

NEW JERSEY

- The New Jersey Assembly approved a bill by a unanimous vote of 80-0 on June 21 that would amend the "State Uniform Construction Code Act" to require that when an inspector or team of inspectors finds a violation of the code at an owner-occupied single family residence, the same inspector or team of inspectors that found the violation must be assigned to carry out any necessary re-inspection concerning the violation. The bill, A-1323, previously passed the Senate and has been sent to Governor Jon Corzine (D) for his consideration.
- On June 21, the New Jersey Assembly approved legislation that would make it an unlawful practice to sell gift cards unless they are packaged or displayed in a manner that prevents a person from viewing the gift card account number prior to purchasing the gift card. The bill, A.B. 3979, sponsored by Assemblyman Paul Moriarty (D), awaits consideration in the Senate Commerce Committee.

NEW YORK

- New York Governor Eliot Spitzer (D) and legislative leaders announced a historic agreement on reforming Wicks Law, which governs construction on public works projects dating back to 1921. The current law applies to any public construction project costing over \$50,000, mandating separate contracts be awarded for each element of a project. Business interests across the state have long criticized Wick's law as one of the most costly and inefficient laws of its kind in the nation. Under the new agreement, the dollar thresholds would be increased and vary according to location: \$3 million downstate, \$1.5 million in the suburbs, and \$500,000 in the upstate region. Additionally, the reform calls for project labor agreements between contractors and workers and permit contractors to be placed on a pre-bid qualification list to expedite project schedules. The measure has been held up in the end-of-session stalemate between the executive and legislative leaders over failure to reach agreement on major issues including hundreds of millions of dollars in capital spending, campaign finance reform, paid family leave and New York City traffic congestion pricing.
- Additionally, Governor Spitzer has been advocating a New York version of the federal Family and Medical Leave Act. Under his proposal, employees would be allowed to take up to 12 weeks off a year with a maximum benefit of \$170 a week in order to care for ailing family members and the birth of a child, including adoption and grandchildren. The governor's proposal would be funded through the workers compensation program and require employee contributions of an additional \$0.45 a week. The current deduction is \$0.60 a week. The proposal faces stiff opposition from business groups who contend that, if enacted, the proposal will cause serious absenteeism and increased costs. It is unclear whether this measure will be taken up in the anticipated July special session.

TEXAS

- In Texas, Governor Rick Perry (R) vetoed H.B. 2006, sponsored by Representative Beverly Woolley (R-Houston), which added several restrictions to the use of eminent domain. In his veto message, Governor Perry stated that, "H.B. 2006 contains two provisions that would vastly expand the cost to Texas taxpayers of public projects to the point where they grossly outweigh the bill's benefits. It is important to balance the rights of Texas landowners whose land is acquired through eminent domain against the needs of the greater taxpaying public." Governor Perry further specified that the two problematic provisions of the bill "expand damages a landowner can recover to include any diminished access to the roadway from remaining property when a portion of a landowner's property is condemned," and, "allow the recovery of damages for factors such as changes in traffic patterns and visibility of the property from the road."
- Governor Perry signed legislation on June 14 that would reform the state's Medicaid program. The bill, S.B. 10, is intended to make several changes to the existing program, including providing health insurance coverage to approximately 200,000 uninsured citizens. Additionally, the reforms will provide assistance for enrollment in private insurance and employer-sponsored plans, create tailored benefit packages for children with special health care needs, promote consumer choice through health savings accounts and consumer directed services, and

reward healthy lifestyle behaviors with health care incentives.

International Council of Shopping Centers

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