



October 2007

Upcoming Events

ICSC Government Relations Leadership Meeting

November 4 - 6, 2007
Hyatt Grand Cypress Hotel,
Orlando, FL



New Jersey Alliance Program

"Transit Oriented & Downtown Development:
How to Get it Done"
Monday, October 29, 2007
Hilton Woodbridge
Woodbridge, NJ

Connecticut Alliance Program

"Regional Realities"
Thursday, November 1, 2007
Rocky Hill Marriot
Rocky Hill, CT

Top Story

House Passes TRIA Extension

In September, the House of Representatives passed a measure extending the Terrorism Risk Insurance Act of 2002 by a vote of 312-110. HR 2761 would extend TRIA, a law that gives insurers federal money for claims arising from terrorism, by an additional 15 years. The current two-year extension expires Dec. 31. The ICSC-backed bill has strong support in the real estate community. The House bill would, beyond extending the current clauses, add group life insurance, broaden the coverage of terrorism to include domestic terror as well as foreign, and also nuclear, chemical and radiological attacks under certain conditions. Federal aid would start when damages reach \$50 million, down from the current \$100 million.

- o **Environment**
[AZ Governor Endorses Industry-Opposed Water Bill](#)
- o **Growth Management**
[Efforts to defeat Florida Hometown Democracy Initiative Continue](#)
- o **Insurance**
[California considers universal health care](#)
- o **Workforce**
[Maine campaigns for new sick leave policies](#)
- o **Other Issues**
[Proposed rules for new Texas gross margins tax released](#)

Environment

- In September, **Arizona** Governor Janet Napolitano sent a letter to Representative James Oberstar (R-MN), and copied to the entire Arizona Congressional delegation, endorsing HR 2421: "The Clean Water Restoration Act of 2007." Rep. Oberstar is the lead sponsor of this bill which would remove the limiting word "navigable" from the original language of the Clean Water Act ("navigable waters of the United States") and add coverage of all "activities affecting these waters." In her letter to Rep. Oberstar, the Governor wrote, "I support your effort to maintain the clean water protections we have enjoyed for more than three decades and denounce any effort to the contrary." However, ICSC

(together with most agricultural and commercial real estate groups) has taken the position that Oberstar's bill would unleash a torrent of lawsuits to re-litigate well-settled issues of wetlands law.

- In **California**, a bill that would mandate certain new commercial buildings meet LEED standards passed the Legislature on the last night of the legislative session with a Senate floor vote of 21-18. The bill, A.B. 888 sponsored by Assembly Member Ted Lieu (D), requires commercial buildings over 50,000 square feet to be built to a LEED Gold rating by January 1, 2013. The bill also shifts the development of building codes 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 Building Standards Commission is opposed to the bill, along with the California Business Properties Association, ICSC's day-to-day representatives in California, and a coalition of other major associations. The bill is pending transmittal to Governor Schwarzenegger, who has until October 14 to act on the bill.
- A bill in the **Massachusetts** General Court governing construction on filled tidelands (H.B. 4184) is still pending consideration in a six-person conference committee. Both chambers developed legislation addressing this issue following the February 2007 State Supreme Court verdict for Moot v. Department of Environmental Protection, 448 Mass. 340 (2007), which ruled that the General Court had to determine state policy on filled tidelands rather than the Department of Environmental Protection, who have historically held that authority. The legislation, seen by many as crucial to helping or hindering future development plans in Massachusetts, has emerged in two different forms in the House and in the Senate. Among the disagreements between the two houses is the issue of exempting landlocked tidelands from licensing. The State Supreme Court had given the General Court until September 1 to fix the law; however, a 60-day extension was granted as the deadline approached.
- **New York** State Comptroller Thomas DiNapoli issued an executive order on September 13 implementing a plan for the Office of the State Comptroller (OSC) to become a model of energy efficiency and conservation for other state agencies to follow. Under his plan, the OSC will purchase 25% of its electricity from renewable sources; be evaluated to determine more efficient uses of energy, paper and other resources; and receive financial credit for every ton of paper and cardboard recycled. Most importantly, Comptroller DiNapoli's proposal calls for all state agencies, public authorities, local governments and school districts to be evaluated for their compliance of existing environmental and energy requirements. An executive order is anticipated from Governor Elliot Spitzer (D) that will establish a statewide sustainability and procurement policy requiring state agencies to purchase commodities, services and technologies that minimize potential adverse impacts on public health and the environment.
- **Ohio** Governor Ted Strickland (D) announced his "Energy, Jobs and

Progress Plan" in late August. As part of the Governor's plan, the electricity deregulation element focuses on the cost and reliability of providing energy. Additionally, this element goes beyond just that focus and includes a comprehensive energy initiative that also addresses environmental concerns and energy efficiency standards. In 1999, Ohio passed legislation that restructured the electric industry in anticipation of a competitive market. The Public Utilities Commission of Ohio (PUCO) established Rate Stabilization Plans for each of the state's investor-owned utilities. The competitive market that was originally envisioned never developed. Other states have encountered this problem and experienced high rate increases. Governor Strickland, House Speaker John Husted (R) and Senate President Bill Harris (R) would like to prevent that situation from occurring in Ohio; however, Speaker Husted and President Harris are favoring a different approach than the Governor's plan.

Growth Management

- In **Arizona**, the Joint Ad Hoc Legislative Study Committee on Impact Fees will begin work in the next few weeks to discuss issues that were not addressed in last session's municipal impact fees legislation (S.B. 1423). This will include the issue of refunding impact fees back to the developer if they are not used for infrastructure, and allowing commercial developers to pre-pay impact fees to get locked in at a guaranteed rate for a time certain during the project. The Committee is required to submit a report to the Legislature which includes recommendations for impact fee legislation that incorporates the findings of the Committee by December 31.
- **Florida** ICSC representatives continue to work with a coalition of groups including the Florida Chamber of Commerce and Floridians for Smart Growth to oppose the Hometown Democracy Initiative and its placement on a statewide ballot. The initiative seeks to allow local voter approval of all local land use plan amendments. Proponents of the initiative claim to be within 100,000 signatures of the total needed to have the proposed constitutional amendment placed on the November 2008 ballot. The Secretary of State's records reflect that 331,060 signatures have been verified of the 611,009 needed to be collected by February 1, 2008. Efforts are underway to raise funds needed to counter the initiative and pursue petition signature revocation, a new procedure established by legislation earlier this year (H.B. 537) that was supported by ICSC.
- Legislative leaders in **Maryland** are discussing a proposal to establish a "Chesapeake Bay Green Fund." Delegate Maggie McIntosh (D), Chair of the House Environmental Matters Committee, recently stated that legislation establishing a new fund for Chesapeake Bay cleanup will likely be considered by the General Assembly in 2008. During the 2007 session, Delegate McIntosh sponsored and Governor Martin O'Malley (D) supported a bill that would have collected fees from developers and deposited the revenues into a Chesapeake Bay Green Fund, which

would have been used for smart growth and cleanup initiatives. The fees were to be placed on new residential and commercial development and the construction of other impervious surfaces such as parking lots. The bill passed the House; however, it stalled in the Senate after President Thomas V. Mike Miller (D) refused to consider revenue-raising legislation unless it addressed the state's projected budget shortfall. While the state is still looking at solutions to the shortfall, Delegate McIntosh and environmental advocacy groups continue to actively promote the establishment of such a Fund.

Insurance

- **California** Governor Arnold Schwarzenegger (R) and the Legislature continue to work on a proposal to increase access to health care to the approximately 6.5 million in the state without insurance. While the Legislature passed a bill addressing universal health care, A.B. 8, requiring employers to arrange for the provision of health care to employees and dependents that is equivalent to, at a minimum, 7.5% of the employer's total social security wages, Governor Schwarzenegger has stated that he would veto the bill. However, as health care reform has been one of the Governor's priority issues during the 2007 legislative session, this issue will not die with the veto. Governor Schwarzenegger called a special session after the Legislature adjourned September 11 to focus on reaching a compromise between his plan and the plan proposed by A.B. 8.
- In **Florida**, prospects for mitigating the state's property insurance crisis appear dim. The Office of Insurance Regulation has subpoenaed several of the major property and casualty insurers and required their response as to why insurance rates have not dropped as significantly as projected following the passage of property insurance reform legislation during a special session earlier this year. Governor Charlie Christ (R) has charged that "collusion" or failure to abide by the new law's requirements (passing savings provided by the state through lower reinsurance costs to the consumer) for the failure to meet projected rate decreases. Additionally, the state is encouraging Citizen's Insurance Corporation – the state-formed insurance carrier of last resort – to expand its coverage so as to "compete" more freely with private insurers, particularly for coastal commercial properties. However, rates proposed for these properties (approximately 35,000 business policies) would result in an average statewide increase of 312.5%. These proposed rates stand in stark contrast to the position taken concerning citizen's homeowner's property insurance policies (approximately 1.4 million) which were rolled back and frozen by the Legislature during the 2007 session.

Workforce

- Despite requests by legislators for **Arizona** Governor Janet Napolitano

(D) to call a special session to address budget shortfalls and concerns with the recently enacted employer sanctions bill (H.B. 2779), it appears that the Legislature will not return back for a special session before the 2008 regular session convenes in January. Governor Napolitano has stated her willingness to call a special session to take up some of the concerns with H.B. 2779, but only if a compromise is in place between legislators. As part of the new law, residents will be able to file a complaint with their county, city or state law enforcement officers if they feel a business is hiring illegal immigrants beginning January 1, 2008. Businesses found to be in violation of the law would be subject to penalties, including the suspension and/or revocation of their business licenses. A federal judge is expected to rule on the constitutionality of the law prior to the beginning of the year.

- A campaign to support a bill in **Maine** requiring businesses with 25 or more employees to provide paid sick leave to employees has commenced several months prior to the start of the 2008 session. The bill, L.D. 1454 sponsored by Representative Jacqueline Norton (D), requires employers to pay each employee a minimum of one hour of paid sick leave for every 30 hours worked by the employee with a maximum of 72 hours accrued annually. The bill carried over to the 2008 session and is pending further consideration in the House Labor Committee.

Other Issues

- **Florida** Speaker of the House Marco Rubio (R) and Senate President Ken Pruitt (R) announced a special session to address the state's budget shortfall beginning October 3. Continued, free-falling reductions in documentary stamp and sales tax collections from the real estate industry have necessitated such action with the projection that an additional \$2 billion worth of additional reductions will be required when the Legislature convenes in March for the 2008 regular session to set the budget for Fiscal Year 2008-2009. The special session, which was previously scheduled to convene September 18, will adjourn October 12.
- Legislation recently introduced in **Michigan** would establish a sales tax holiday for certain products, such as clothes, school supplies, computers and software. The bill, H.B. 5140, sponsored by Representative Brian Palmer (R), would exempt from the sales tax certain items during the fourth weekend of August every year. The bill is pending consideration in the House Committee on Tax Policy.
- **Massachusetts** Governor Deval Patrick (D) delivered his long-awaited verdict on casinos, announcing his support for the construction of three casinos in the state. While the Governor's office has yet to file the related legislation, Lieutenant Governor Tim Murray (D) has been lobbying lawmakers to get behind the proposal in anticipation of what will be a tough test for Governor Patrick's plan on the controversial issue.

- On September 12, **Minnesota** Governor Tim Pawlenty (R) signed a \$157.3 million flood relief package into law following a short special session to address the needs of flood-ravaged southeastern Minnesota. Governor Pawlenty and the Legislature could not agree on a transportation funding package in response to the collapse of the I-35 bridge in Minneapolis. Besides failing to reach agreement on a transportation package, the vetoed bonding and tax bills from the 2007 regular session were not resurrected. Minnesota cities pressured the Governor and Legislature to consider the tax bill during special session because the bill authorizes millions of state dollars to local municipalities. The tax bill also housed the Mall of America expansion project, called Phase II. The project, now considered dead until the 2008 regular session, would double the size of the Mall of America in Bloomington, Minnesota.
- **Texas** Comptroller Susan Combs released the proposed rules necessary to implement the state's new gross margins tax following the enactment of legislation passed during the third called session of 2006 (H.B. 3) and the 2007 regular session (H.B. 3928). Comptroller Combs estimated that 200,000 entities that have never been included under the franchise tax will now have to file franchise tax reports, whether they owe taxes or not. The proposed rules are subject to a 30-day public comment period, after which they are expected to be adopted in December.

International Council of Shopping Centers

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