



November 2007

## Upcoming Events

### ICSC Government Relations Leadership Meeting

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



**Colorado Alliance**  
Denver, CO  
January 17

**Gulf South IDEX & Alliance**  
Birmingham, AL  
February 13

**Illinois IDEX & Alliance**  
Chicago, IL  
February 21

**West Michigan Alliance**  
Grand Rapids, MI  
March 4

**North Florida IDEX & Alliance**  
Jacksonville, FL  
April 7

**East Michigan Alliance**  
Birmingham, MI  
April 17

**Wisconsin IDEX & Alliance**  
April 2008

**Northern Virginia Alliance**  
Winter 2008

**Tennessee Alliance**  
Winter 2008

### Top Story

## Congress Set to Consider Largest Tax Increase To Commercial Real Estate Since 1986 Tax Reform Act

House Ways and Means Chairman Charlie Rangel (D-NY) is moving forward rapidly with legislation that would make major changes to the U.S. tax structure. The bill proposes a massive tax increase for partnerships, raising the tax rate on "carried interest" from 15 percent to 35 percent. The Ways and Means Committee is scheduled to vote on the measure this week and full House consideration is planned before Thanksgiving. Commercial real estate projects, most of which are organized in partnerships, will be significantly impacted. Please visit the ICSC Legislative Action Center at <http://lac.icsc.org> to send an urgent message to Congress expressing your opposition to increased taxes on partnerships.

ICSC believes that Chairman Rangel's proposal is in many ways reminiscent of the passive loss rules enacted as part of the Tax Reform Act of 1986. No one foresaw that those changes would have contributed to the savings and loan collapse, the formation of the Resolution Trust Corporation and a credit crunch that caused a major downturn in the real estate industry. ICSC remains apprehensive that this proposal could create the same significant economic decline in communities across the country.

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### Environment

#### Committee Consideration of Clean Water Restoration Act Postponed

House Transportation and Infrastructure Committee Chair, Rep. James Oberstar (D-MN), has decided to delay the "mark up" (the final vote on language to be sent to the floor of the House) of HR 2421, the Clean Water Restoration Act, until early December. In the meantime, Oberstar has indicated that he will hold hearings on the bill in November. HR 2421 would drastically expand the federal reach of the Clean Water Act by extending federal jurisdiction to "all waters of the U.S." and would also regulate "activities impacting" those waters. ICSC is a member of the Waters Advocacy Coalition; a broad-based industry and local government coalition opposed to the Oberstar bill.

#### Lieberman and Warner introduce "America's Climate Security Act"

Senators Joseph Lieberman (D-CT) and John Warner (R-VA) recently introduced S 2191, "America's Climate Security Act." Joining Lieberman and Warner in co-sponsoring this bill are

Senators Norm Coleman (R-MN), Tom Harkin (D-IA), Elizabeth Dole (R-NC), Benjamin Cardin (D-MD), Susan Collins (R-ME) and Amy Klobuchar (D-MN). Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA) said that she would like to see a mark up by the subcommittee chaired by Sen. Lieberman by November 1, with full committee action before Congress adjourns for the year.

The bill would establish the framework of a federal program to reduce U.S. greenhouse gas emissions. In addition to placing a declining emissions cap on electric power, transportation and manufacturing sources, this proposal would also impose stringent new building code standards on states and local governments for energy efficiency. Given the uncertainty of future efficiency technologies and their costs, it has been difficult to predict the actual impact of these proposals on the retail real estate industry.

## State News

- On October 14, **California** Governor Arnold Schwarzenegger (R) vetoed a bill that would have required new commercial buildings to meet certain LEED standards. The bill, AB 888, sponsored by Assembly Member Ted Lieu (D), would have required all new commercial buildings over 50,000 square feet to be built to a LEED Gold rating by January 1, 2013. The bill also would have shifted the development of building codes away from the Building Standards Commission to environmental regulatory agencies. In his veto message, Schwarzenegger contended that provisions in the bill would create a bias for certain building materials over others without a clear benefit. ICSC's day-to-day representatives in California, the California Business Properties Association, a coalition of other major associations, and the state Building Standards Commission opposed the bill.

Schwarzenegger also vetoed related legislation that would have placed similar mandates on new public (A.B. 35) and residential (A.B. 1058) construction.

- **Colorado** Governor Bill Ritter (D) has made renewable energy one of the priorities of his administration by recreating the Governor's Office of Energy Management and Conservation. Goals of the office include expanding renewable and clean energy resources and creating opportunities for the state's economy, environment and energy independence. The office's website, <http://www.colorado.gov/energy>, details assistance, such as financial incentives for new and existing construction, provided towards the goal of maximizing energy efficiency and renewable energy potential. Additionally, Ritter announced that a Colorado climate control plan and suggestions for legislation will be released sometime in November.
- **Massachusetts** has issued first-time requirements for utilities, developers and any large construction project to report and mitigate greenhouse gas emissions as part of environmental impact reviews, a move that includes a broadening of those requirements to include most large retail shopping centers.

## Growth Management

### State News

- In **Arizona**, Governor Janet Napolitano's (D) Growth Cabinet has made several recommendations and is now taking them statewide for input from local communities. A few of the major issues include: (1) plans for mass transit in any new transportation corridors; (2) employment moving near residential centers; (3) emphasis on attracting knowledge-based industries, such as biotechnology; (4) the immediate preservation of open space; and (5) the backing of reforms to the State Land Department, which oversees 10 million acres.
- Facing what has been labeled a "drinking water crisis," the State of **Georgia** filed a suit against the Army Corps of Engineers relating to releases of water from Lake Lanier. Lake Lanier serves as a major drinking water reservoir for much of North Georgia and the releases to the Chattahoochee River below the dam feed portions of Alabama and Florida. Governor Sonny Perdue (R) held a news conference on the dry lake bed and stated he contacted President George W. Bush for intervention. Claims of protection of down river endangered species, power generation and Gulf of Mexico fishing interests have entered into the discussion. The Corps expects a study of the water releases to take at least 120 days; however, the State of Georgia claims that without significant rainfall, there is only an 80-day supply of water for the region. Such claims of this environmental magnitude will likely enter into discussions of commercial growth and eventually affect prices and projects.

To address this issue, Perdue is suggesting a 10 percent reduction in the withdrawals for water supply by all public suppliers. This is leading to discussions of whether or not local governments should be gathering

anticipated water uses by all developments seeking zoning and permitting. The potential impact to the shopping center industry warrants close monitoring of the situation.

- In **Massachusetts**, Governor Deval Patrick (D) announced regulations designed to provide easier access to permits for building projects along state roads. The review phase for most projects will not exceed an aggregate 75 business days. Tied into these regulations are requirements that developers submit to a greenhouse gas emissions review.
- For the third time since 2000, citizens in **Oregon** will vote on a constitutional amendment addressing property rights. Measure 49 will be on the ballot for the state's November 6 special election. The initiative seeks to modify Measure 37 of 2004, related to regulatory takings. Specifically, Measure 37 requires that government officials allow property owners to develop land or compensate the property owners if the land use regulations decrease the value of the property. Measure 49 would amend the existing law by curbing property owners' ability to develop large subdivisions and commercial projects on land reserved for residential and farm use. Supporters of the initiative include Governor Ted Kulongoski (D); however, the organization that drafted Measure 37, Oregonians in Action, is opposing Measure 49.

## Insurance

### State News

- As expected, **California** Governor Arnold Schwarzenegger (R) vetoed state Democrats' legislative proposal to provide universal health care to all Californians. In his veto message, Schwarzenegger contended that the bill, AB 8, would not have reduced health care costs and would have placed too much of the financial burden on employers. AB 8 would have required employers to arrange for the provision of employee and dependent health care equivalent to, at a minimum, 7.5% of the employer's total social security wages.

Health care reform has been one of the governor's priority issues during the 2007 legislative session, and a special session to address the issue was convened after the legislature adjourned September 11. Schwarzenegger's health care bill has encountered criticism from many during the special session, including Democratic leaders Senate President Pro Tem Don Perata (D) and Assembly Speaker Fabian Núñez (D), who led the charge for the passage of AB 8 during the regular session. Both chambers have recessed and will not return to deliberate on this issue until a compromise can be reached.

- In **New York**, Governor Eliot Spitzer (D) found himself at the center of the national debate regarding reauthorization and expansion of the State Child Health Insurance Program (SCHIP). In the wake of President George W. Bush's veto of the measure, New York, along with a handful of other states, filed a lawsuit against the federal government over imposing new, restrictive rules that deny states the ability to expand the program by raising income eligibility levels.

Earlier this year, Spitzer signed legislation expanding the SCHIP program to include families with incomes 400% above the poverty level. Opponents of the legislation claimed that such attempts to broaden the program go beyond the original intent to cover only the nation's poorest children and encourage people to switch from private to public plans, thereby overburdening and jeopardizing the system. Spitzer vehemently disagreed and in anticipation of additional federal funding immediately called upon all eligible families across the state to apply for the newly expanded coverage; however, the state failed to obtain the necessary federal approval and President Bush's ensuing veto blocked additional funds needed to help pay for the program.

## Workforce

### State News

- The **Arizona** legislature and state business leaders continue to try to work out differences in the employer sanctions law that passed last session (HB 2779). The Ad Hoc Committee on Business Owners and Work Site Enforcement has been meeting with their efforts focusing on how the law punishes violators who have multiple locations. Employers are concerned that if an undocumented worker is hired by accident and works at multiple locations of a business both locations will be shut down. The ad hoc committee's recommendations will be considered for possible legislative changes during the 2008 session.

## Other Issues

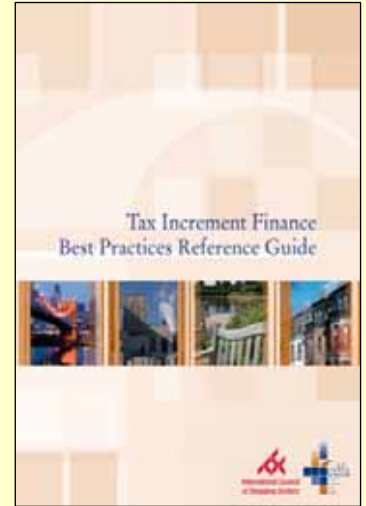
### **“Tax Increment Finance Best Practices Reference Guide” Released**

The “Tax Increment Finance Best Practices Reference Guide,” a joint publication of the Council of Development Finance Agencies (CDFA) and ICSC was released on November 1.

During the last three decades, local governments have increasingly used Tax Increment Financing (TIF) to finance diverse infrastructure projects for their communities. Today, 49 states and the District of Columbia have TIF enabling statutes to finance projects including retail, mixed-use, housing, transportation, Brownfield remediation and community amenity development.

The “Tax Increment Finance Best Practices Reference Guide” presents best practices in TIF throughout the country to direct communities in appropriate TIF use. The guide also includes 26 case studies to highlight a variety of TIF applications.

The “Tax Increment Finance Best Practices Reference Guide,” available on the CDFA and ICSC websites at [www.cdfa.net](http://www.cdfa.net) and [www.icsc.org](http://www.icsc.org), is free to CDFA and ICSC members, and \$25 for non-members.



### **Sales Tax Fairness Effort Continues**

This summer Representatives Bill Delahunt (D-MA) and Ray LaHood (R-IL) introduced HR 3396, companion legislation to S 34, the “Sales Tax Fairness and Simplification Act,” introduced by Senator Enzi (R-WY) in May. ICSC has long supported Congress granting authority to states to level the sales tax collection playing field for all types of retail sales. So far 34 states and the District of Columbia have approved the Streamlined Sales and Use Tax Agreement, and 22 states, representing more than 57 million constituents, have enacted legislation to change the tax laws and implement the requirements of the agreement.

To complicate matters, the separate issue of extending the “Internet Tax Moratorium” - which set a moratorium on charging taxes for DSL, cable and other Internet access for consumers – saw activity in both the House and Senate last month. On Oct. 25 the Senate approved a seven-year extension of the moratorium, about one a week after the House passed a bill calling for a four-year moratorium. The tax ban, first approved in 1998, is set to expire Nov. 1. Attempts in both the House and Senate to make the ban permanent in recent weeks were unsuccessful. The two chambers will have to reach a compromise on the length of the ban and other differences before the bill can be sent to the White House.

### **State News**

- **Colorado** Governor Bill Ritter (D) announced his statewide economic development package late last month. The package includes: (1) simplifying corporate income taxes by replacing the current, multi-factored system with a simple single-sales factor; (2) increasing the exemption for the Business Personal Property Tax from \$2500 to \$7000; and (3) developing a strategic plan to maximize the impact of state promotional dollars and further promote Colorado as a premiere travel destination. The legislative package will be introduced during the 2008 session, which is scheduled to convene January 9.
- In **Texas**, ICSC is participating in a coalition of trade associations in support of Proposition 6, which will be on the November 6 constitutional amendment ballot. Proposition 6 will protect independent contractors and small business owners from an unfair tax on personal vehicles. If passed, it will prohibit local taxing jurisdictions from assessing a property tax on personal vehicles used for business purposes as if they were business personal property. The legislature and the State Attorney General, Greg Abbott (R), have agreed that local tax assessors should not assess this tax; however, this constitutional amendment must pass in order to clarify the law. Other trade associations in the coalition supporting Proposition 6 include: National Federation of Independent Business, Texas Association of Business, Texas Association of Realtors, Texas Farm Bureau, Texas Forestry Association, Texas Poultry Federation, Texas Nursery & Landscape Association, Texas and Southwestern Cattle Raisers Association, National Association of Insurance & Financial Advisors-Texas, Independent Insurance Agents of Texas, Texas Association of Builders, Texas Construction Association and Texas Home Warranty Association. For more information, the coalition’s website is: [www.VoteForProp6.org](http://www.VoteForProp6.org).