

June 3, 2011

NY: City Considers Wage Mandate for Retail Development

City Council Bill 251-A (Koppell, D- District 11, the Bronx), a measure to mandate higher wages at city-backed projects, would require recipients of \$100,000 or greater in financial assistance and “covered employers” to pay a “living wage” of \$10 an hour with benefits or \$11.50 an hour without health benefits.

The wage requirements are indexed to inflation and would remain in effect for a period of at least 30 years. The legislation also imposes compliance and reporting requirements on both financial assistance recipients and covered employers. Financial assistance is defined to include all city, state or federal funds for the “improvement of real property, economic development, job retention and growth or other similar purposes.” Financial assistance may be discretionary and may include but is not limited to: bond financing, environmental remediation costs, tax increment financing and tax abatements.

Representing ICSC before the City Council in May, G. Lamont Blackstone of G. L. Blackstone and Associates addressed the issue of working class poverty directly in his testimony and said, “This bill is the wrong tool, at the wrong time, being used in the wrong way...If financial incentives are needed in order for a retail development or redevelopment project to proceed, if that developer’s project or that retailer’s store is not financially feasible but for the decision of the public sector to provide some quantifiable amount of economic incentives, it defeats the purpose of providing the incentive to begin with.” The incremental costs associated with the proposal approach a 60% increase in the effective minimum wage when factors such as record-keeping expenses for compliance monitoring are added.

Following the lengthy public hearing, no committee action was taken on 251-A. Whether the measure will be brought before the full council for a vote remains unclear. ICSC will continue to closely follow and report on the legislation.

CA: Statewide Big Box Ban Moves Forward in California

On a strict party line vote of 21-14, the California State Senate approved S.B. 469 with the minimum votes required to pass the bill. The legislation, which now moves to the State Assembly for consideration, will make it increasingly difficult to build large format retail stores in California.

On the surface, S.B. 469 mandates projects 90,000 square feet and larger to conduct “economic and community” impact reports that include a long list of complicated statutory “assessments” that must be made and submitted to the local agency. However, the practical impact of the bill will make it more expensive to develop such properties, and more difficult by providing lawsuit “hooks” to groups that oppose such development.

By allowing land-use planning to be used in a broader sense, S.B. 469 is designed to stop growth, which in turn hurts employees and the economy, further damaging state tax revenues, killing green-collar jobs by stopping development of the most energy and water efficient, sustainable, retail stores in the nation, while limiting access to fresh groceries in underserved communities.

CA: Affiliate Nexus Passes Assembly

On June 1 the California Assembly passed A.B. 153 by a vote of 50-21. A.B. 153 proposes to clarify state laws to require Internet-based non-California merchants with a network in the state to collect sales tax on purchases shipped into California. The proposal sets a \$500,000 cumulative transaction threshold for the sales from all of the non-California retailers within the previous 12 months to customers who are

from California who were referred to the seller through the affiliate system. A.B. 153 is now before the Senate for their consideration.

TX: Governor Vetoes Remote Seller Bill; Special Session Convened

Governor Rick Perry (R) vetoed H.B. 2403, which would require remote sellers to collect sales tax if they use a website in Texas to sell digital goods or they are affiliated with (50% control test) an entity in Texas that performs sales related to activities for the retailer or sells products similar to the retailer under a similar business name.

The regular session of the Texas Legislature adjourned on Monday, May 30 and was subsequently called into special session by the governor. With the legislature is back in a special session, there may be an opportunity to override the governor's veto of the Remote Seller Bill. They must also pass the fiscal matters bill, which provides revenue to fund the state budget that was passed during the regular session. While they are in town, Governor Perry decided to also assign them the unfinished task of Congressional redistricting. Due to population growth, Texas is adding four new seats in the U.S. House of Representatives.

During the regular Texas Legislative Session, ICSC successfully opposed legislation with significant impact to the shopping center industry. A measure that would have eliminated the discount for timely filing of sales taxes and bills that would have mandated sales price disclosure upon the sale of commercial property were defeated. However, the legislature did not make any substantive changes to the franchise tax, maintaining that pass-through charges in triple net leases are still taxable. The legislature is expected to take action to continue the \$1 million franchise tax exemption during the special session, so that issue could still be resolved favorably for ICSC members.

MA: Senate Rejects Sales Tax Reduction Amendment

The Massachusetts Senate sorted through 599 amendments to the budget released last week. An amendment that would have rolled back the sales tax was rejected, as well as an amendment to create a permanent, annual sales tax holiday. The Senate and House budgets will be negotiated in conference committee to create a final budget.

FASB/IASB Reverses Course on Lease Accounting Issues

Recently the Financial Accounting Standards Board and the International Accounting Standards Board did an about-face on a number of positive changes that the real estate community had largely supported in the ongoing lease accounting proposal. Some of those changes included a reversion of front-loading expenses and not allowing a straight-line cost, lease terms being susceptible to reassessment and adjustment, etc. As a result of this latest action, the Boards have added complexity back into the equation, backsliding where the business community believed it had previously made progress.

The Boards have essentially decided to go back to their original approach of requiring lessees to recognize lease expense on a basis consistent with today's capital leases. These latest decisions, like all decisions to date, are tentative and will not be finalized until the Boards approve a final standard.

Based on their latest deliberations, the Boards decided that lessees should apply the finance lease approach to all leases recognized on the balance sheet (i.e., only one type of lease exists for lessees). The lessee would recognize interest expense using the interest method and separately amortize the right-of-use asset (generally on a straight-line basis). This expense recognition pattern is consistent with the treatment of capital leases under current lease accounting and the exposure draft proposal.

Those closely following the process say the project outcome seems largely unsettled now. The anticipated rules were expected to be simpler and closer to current GAAP on the lessee side. With the Boards' decision to re-introduce accelerated P&L costs, not to call the expense rent and complicating the determinations of the incremental borrowing rate, the lease term and reassessments, complexity reigns. Observers say major concerns also remain with lessor issues, although progress seems to be more in favor of industry views.

FASB is very interested to know if there are specific leasing transactions that have been impacted by

anticipation of the new standard. ICSC asks that you provide this commentary directly to the FASB (www.fasb.org) and/or provide this data to us. ICSC is working with The Real Estate Roundtable and others in the real estate community to provide examples of the negative consequences this proposal will have on commercial real estate.

ICSC Joins Tax Reform Debate

ICSC is working closely with dozens of other business organizations to oppose a tax reform proposal that was leaked from the U.S. Department of Treasury and would negatively impact 95 percent of America's businesses.

Every day, nearly 70 million Americans are employed by businesses that are organized as something other than a traditional C corporation. These "flow-through" businesses, structured as S corporations, partnerships, LLCs, or sole proprietorships, contribute more to the nation's economy and result in more jobs than all the publicly-traded corporations combined. Despite this, published reports indicate the Treasury Department is considering pursuing a tax "reform" process that would benefit C corporations at the expense of flow-through businesses. According to recent estimates by Ernst & Young, this approach to tax reform could increase taxes on flow-through job creators of all sizes by at least \$27 billion per year, making it more difficult for them to raise capital and hire new employees.

ICSC and RILA to Explore Sustainability Issues

Next week, ICSC and the Retail Industry Leaders Association will bring together top representatives of the retail property development and retail tenant communities to examine obstacles that can impede sustainability practices at multi-tenant retail centers. A particular focus of the meeting will be the "split incentives" issue. This exists where, for example, a landlord's upfront costs to improve energy efficiency result in savings for the tenants – but no clear payback for the landlord. Thus, without first addressing the question of "who pays and who benefits," many sustainability projects never get off the ground. Many of these issues may be addressed through updated lease clauses and memoranda of understanding between landlord and tenant.

ICSC and RILA hope to generate ideas and information that can be shared with the broader retail real estate industry. For future updates, contact kjeffreys@icsc.org.

Upcoming Events:

- June 3 - NY Committee Day on the Hill
- June 7-9 - California Commercial Real Estate Summit, Sacramento, CA
- June 8 - Arizona Session Review and Cocktail Reception, Phoenix, AZ
- June 14 - ICSC Webinar "[Understanding Lease Issues in Bankruptcy](#)"
- June 21 - ICSC Day on Beacon Hill, Boston, MA
- June 21 - Minnesota Insider's Review and Session Update Cocktail Reception, St. Paul, Minnesota

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