

April 26, 2013

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U.S. Senate Moves Forward on Marketplace Fairness - Final Vote May 6

On April 25, after four days of some Senators trying to tie the Marketplace Fairness bill in knots, ICSC and its allies prevailed with the U.S. Senate approving 63-30 to cut off debate and move the legislation forward in that chamber ([to see vote tally please click here](#)). In an agreement reached Thursday evening, a final vote is set for May 6. Congress leaves Washington for a district work period the week of April 29, which provides time for both sides on the issue to amplify their communications and make contact with lawmakers back home. ICSC encourages you to take action with your Senators and ask them to vote YES on S. 743, "The Marketplace Fairness Act of 2013," when they return. The vote on May 6 is crucial to the forward progress of the bill this year. Assuming passage, the bill then goes to the House where it must be ratified and overcome challenges in that body.

Here is how you can help -- Personal touches will be key while Members of Congress are back home. If you see your Senators or Representative at public events, please make a point to bring up this issue. It will also be valuable to attend townhall meetings, invite them to tour your shopping center and set up meetings with their district offices to talk about the importance of the bill. Please ask your business colleagues and retail tenants to get engaged as well, even if it's just by sending an email or tweeting an office. The tweet generator is located at <http://www.21stcenturyretail.org>.

[Click here for an overview of media activity.](#)

For more information about marketplace fairness, visit www.21stcenturyretail.org.

Shaheen-Portman Energy Legislation Reintroduced

The Energy Savings and Industrial Competitiveness Act of 2013 (S.1000) was introduced on April 18 by lead sponsors Sen. Robert Portman (R-OH) and Sen. Jeanne Shaheen (D-NH). This proposed legislation is largely the same as those portions of last year's proposal, which failed to pass Congress (four provisions of last year's bill were adopted into legislation that did pass Congress).

From the perspective of commercial property owners and developers, there are two significant provisions in this year's bill. The first includes language directing the U.S. Department of Energy (DOE) to promote tougher building code standards at the state and local level based upon national model building energy codes. DOE is also directed to encourage full compliance with the new standards at the state and local level. The second important provision would establish a new energy efficiency financing initiative to be run out of existing DOE offices. States receiving federal grants under this program would be granted some flexibility in launching new initiatives such as commercial Property Assessed Clean Energy (PACE) programs, revolving loan funds or utility on-bill financing or repayment programs, among others.

It is unclear how much momentum can be generated by the proponents of this legislation given the rancorous legislative atmosphere in the Senate.

HI: Public Lands Development Corporation Authorization Repealed

Hawaii Governor Neil Abercrombie (D) signed HB 1133, sponsored by Representative Cindy Evans (D, North Kona-

North Kohala) into law on April 22, thus becoming Act 38 of 2013. Act 38 repeals a two year-old act that created the Public Land Development Corporation (PLDC). Created in 2011, the PLDC was “a state entity created by the Legislature in 2011 to develop state lands and generate revenues for the Department of Land and Natural Resources. Through public-private partnerships, the corporation aims to attract private companies as joint partners in development opportunities.” Two years ago most of the legislature voted to approve the creation of the PLDC, but during the rulemaking phase the public’s opposition forced the removal of the PLDC. HB 1133 was passed in the both House and Senate unanimously.

MA: State May Be First to Ban Plastic Bags

Massachusetts could become the first state to ban plastic bag use at large retail stores as part of an effort to prevent litter from harming marine animals and to reduce waste scattered through streets and stuck in tree branches.

Lawmakers on the Environment, Natural Resources, and Agriculture Committee quickly moved the legislation (H 696 and S 359) forward this week following a hearing on the issue. The bills ban single-use plastic bags at retail stores larger than 4,000 square feet. The ban would exempt smaller retail stores and not include plastic produce and bakery bags used inside grocery stores.

The ban does not force a property owner to carve-out space on their property for a collection point for recyclable items.

MA: DEP Seeks Public Comment on Wetlands Regulations

The Department of Environmental Protection (DEP) held an informational meeting on April 22 to discuss proposed amendments to regulations that deal with wetlands, waterways and water quality certifications, as well as wastewater-related changes to state-issued permits, operation standards for sewer treatment works, and Title 5 state approvals. DEP is seeking public comment until May 10. The proposed amendments are part of the department's regulatory reform initiative, which officials say aims to make environmental regulations more efficient while maintaining high standards for public health and environment protection. The amendments would eliminate unnecessary permits, exempt certain Wetlands Protection Act filing requirements, modify some wastewater treatment plant operator requirements, and streamline a host of regulations involving such things as Chapter 91 licenses, ecological restoration projects, wetlands protection and storm water management structures, and Title 5 reviews.

The proposed amendments are among several packages of regulatory changes undertaken as part of MassDEP's Regulatory Reform Initiative. More information on the initiative (including a complete list of all of the projects that are part of the initiative) can be found at www.mass.gov/dep/about/priorities/regreform.htm

MN: Street Improvement Fees Proposed

The Minnesota League of Cities has proposed legislation that provides broad authority to cities to impose a yet-to-be determined tax on property owners, essentially an additional property tax.

Under the proposal, cities wouldn't have to prove benefit to an affected property to justify imposing the new fee. City Councils around the state would be free to draw new street improvement districts in any shape, allowing them to impose the tax only on certain properties. These new fees do not sunset after a particular project has been paid for, and can be collected for up to 20 years.

ICSC is working in coordination with a large group of stakeholders, spearheaded by the Minnesota Auto Dealers Association and a number of non-profit organizations. The message has been that property owners already pay for street improvements through property taxes and other taxing mechanisms.

The legislation is included in the House Omnibus Tax bill and the Senate Transportation Omnibus bill. The Senate Tax Chair does not support the legislation but wants the issue to be dealt with in the tax conference committees occurring soon.

MN: Work Continues on Budget Bills

As the Minnesota legislature heads into its final month both the Senate and the House are working vigorously on their respective budget bills.

Senate Democrats passed their version of the tax bill, which would create a new third tier income tax rate of 9.4% on joint filers with a taxable income \$140,960 or more a year. Single filers would pay the new 9.4% rate starting at a taxable income of \$79,730.

The Senate tax plan would also increase the tobacco tax by 94 cents per pack. It would expand the state sales tax to consumer services and clothing but lower the overall sales tax rate. The bill also includes state funding to help

Rochester deal with a proposed expansion by the Mayo Clinic; it authorizes tax breaks for the Mall of America expansion and tax breaks to help lure a biotech company to expand in Brooklyn Park.

The House included in its bill a higher tax on alcohol and a surcharge on high earners. Affiliate Nexus language is included in both the House and Senate tax bills to go along with momentum at the federal level with the Main Street Fairness Act.

WA: Sales Tax on Janitorial Services Removed from Revenue Package

This week the Washington state House Finance committee voted 8-5 to approve House Bill 2038, a \$900 million tax package. HB 2038 is sponsored by the Finance Committee's Chair, Representative Reuven Carlyle (D - 36th). The tax package, originally slated at \$1.16 billion, was slimmed down when the committee removed a number of proposed revenue increases. One of the original plan's increases was to repeal the exemption for janitorial services with respect to sales tax. The janitorial services tax was a major issue for ICSC and other commercial real estate organizations. The real estate industry worked closely with SEIU Local 6 in opposition to the janitorial services tax. The SEIU was concerned that the sale tax, as high as 9.6% in some counties, would force larger real-estate facilities to take their janitorial services in-house. It was calculated that the applying the sales tax would cost real estate companies between .11 to .13 cents per square foot. There was also a concern that current contracts would be re-negotiated to reflect the new tax charge. Lawmakers noted the cohesive effort of both labor and business in opposition to this tax proposal.

While any new taxes on the industry have been avoided, the largest component of the revenue package, the extension of the Business & Occupation (B&O) tax surcharge, is slated to be permanent. In 2010 an additional tax rate of 0.3% was temporarily added to the 1.5% B&O tax on real estate brokers, contests of chance, and a host of services and other businesses. HB 2038 seeks to remove the sunset date, June 30, 2013, and make the 0.3% increase permanent. The Republican members of the House Finance Committee proposed an amendment to remove the permanent extension of the B&O "temporary surcharge" but the effort failed along party lines. The measure is now on its way to the House Rules Committee.

Upcoming State GR Events

- **IL Day at the Capitol:** 1 May, 2013; Springfield, IL
- **CA Commercial Real Estate Summit & CBPA Annual Meeting:** 11-12 June, 2013; Sacramento, CA

For more information about participation in the ICSC Days at the State Capitols please contact Lorin Alusic, State and Local Government Relations, at lalusic@icsc.org.

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