

**January 18, 2013**

- **Outlook for Marketplace Fairness**
- **Fiscal Cliff Re-Cap**
- **Preview of the 113th Congress**
- **Join Us for the 2013 Strategic Leadership Summit**
- **ICSC PAC 2011-2012 Election Results**
- **Important Legal Ruling on Stormwater Regulation**
- **ICSC Files Supreme Court Brief**
- **MA: Governor Announces Regulatory Reforms**
- **NY: Governor Cuomo Delivers 2013 State of the State Address**
- **VA: Governor's Transportation Plan = Sales Tax Fairness and a Higher Sales Tax**
- **Upcoming Days at the Capitol**

#### **Outlook for Marketplace Fairness**

ICSC has learned that the House and Senate bill sponsors are preparing to reintroduce legislation as soon as early February to level the playing field with regards to sales tax collection by online and other remote sellers. ICSC, along with our industry partners, are formalizing a coalition on the issue that will educate new Congressional offices about the importance of this legislation to the retail industry and support enactment.

#### **Fiscal Cliff Re-Cap**

After an ugly and protracted negotiation process, President Obama signed legislation to avoid the fiscal cliff on January 3, 2013. Amongst other provisions, the legislation permanently extends tax rates for families with incomes below \$450,000 annually and individuals with incomes below \$400,000 annually. While the process seems to have left the country more divided, retail real estate fared reasonably well in the final package. The relevant tax provisions for commercial real estate include extension through 2013 of accelerated depreciation on leasehold improvements and New Markets Tax Credit, a permanent \$5 million estate tax exemption and preservation of carried interest tax treatment.

#### **Preview of the 113th Congress**

The new 113th Congress (sworn in on January 3) faces several budget and tax challenges that must be dealt with in the next 60 days as the country's debt reaches the statutory limit. Automatic cuts from sequestration that were delayed for two months in the fiscal cliff deal will expire, putting the U.S. government at risk of defaulting on its obligations without an increase in the federal debt limit. Addressing both of those issues will likely result in another prolonged debate lasting through February. Longer term, Washington insiders predict the new Congress will take up immigration reform, gun control and tax reform – all hot button and complicated policy matters. To ensure the shopping center industry's legislative agenda is well-represented on Capitol Hill, please join us April 9-10 in Washington for ICSC's Strategic Leadership Summit, our Congressional lobby day (see below).

#### **Join Us for the 2013 Strategic Leadership Summit**

For more than 20 years the shopping center industry has assembled in Washington, DC to deliver its legislative agenda to Capitol Hill. ICSC will hold the 2013 Strategic Leadership Summit on April 9-10. Make your voice heard on legislation ranging from tax reform to the environment to workforce matters. SLS provides an opportunity to have face-to-face meetings with Members of Congress or their staff

where you can articulate your views on issues of importance to your company and the shopping center industry.

[Click here for more information.](#)

### **ICSC PAC 2011-2012 Election Results**

This past election cycle closed on a high note for ICSC's Political Action Committee (PAC):

- ICSC PAC raised over \$717,000 in the 2011-2012 cycle, contributing to 165 incumbents and candidates, both Republicans and Democrats, in the House and Senate.
- 13 of the 19 Senators and candidates ICSC PAC supported won.
- 125 of 135 Representatives and candidates ICSC PAC supported won.
- ICSC PAC contributed over \$815,000 to Senate and House campaigns, Party Committees and leadership PACs.
- 94% of all House of Representatives ICSC PAC supported were elected or reelected to office.
- 70% of all in-cycle Senators ICSC PAC supported were elected or reelected to office.
- ICSC members and staff met with over 40 candidates for open federal seats.
- ICSC PAC supported 22 open seat candidates.

For more information please contact ICSC PAC Manager Rachel Kelley at [rkelly@icsc.org](mailto:rkelly@icsc.org).

### **Important Legal Ruling on Stormwater Regulation**

A federal District Court in Virginia has ruled that the U.S. Environmental Protection Agency (EPA) exceeded its authority under the Clean Water Act when it attempted to regulate the flow of water itself, rather than any pollutants in the water. EPA tried to force the county government and state Department of Transportation to reduce the flow of water entering Accotink Creek by almost 50% – at an estimated cost of \$300 million beyond what the county was already spending on new stormwater controls within this single creek's watershed. The state and county governments challenged EPA's authority to regulate water as if it were a pollutant. The federal Clean Water Act delegates authority to EPA to regulate the "discharge" of "pollutants" into "navigable waters" of the United States. In this situation, which is being repeated by EPA across the country, the agency simply ordered the local government to reduce the total flow of water, rather than the discharge of specific pollutants. The District Court judge ruled that there was no ambiguity within the Clean Water Act that would permit EPA to reinterpret the law in favor of such unlimited power over non-pollutants – and thus over the budgets of local governments.

"EPA's thinking here was that if Congress didn't explicitly prohibit the agency from doing something, that meant it could, in fact, do it," said Virginia's Attorney General Ken Cuccinelli. "Logic like that would lead the EPA to conclude that if Congress didn't prohibit it from invading Mexico, it had the authority to invade Mexico. This incredibly flawed thinking would have allowed the agency to dramatically expand its power at its own unlimited discretion. Today, the court said otherwise."

The District Court ruling is likely to be appealed and ICSC will continue to follow this case to its ultimate conclusion.

### **ICSC Files Supreme Court Brief**

ICSC joined in an amicus brief to the U.S. Supreme Court supporting the property owner in *Koontz v. St. Johns River Water Management District*. The case challenges the common practice of permit-granting authorities demanding that property owners pay for unrelated services and amenities as a condition for receiving their permit. The Supreme Court heard oral arguments on January 15, 2013 and is expected to issue a ruling by summer.

### **MA: Governor Announces Regulatory Reforms**

On January 7 Massachusetts Governor Deval Patrick (D) announced a significant overhaul of state regulations. Governor Patrick announced his plan to file legislation to streamline or eliminate several licensing boards to make doing business simpler for owners and professionals. The Governor announced his administration would eliminate or change 286 state regulations as part of its ongoing

review of the bureaucracy in state government that the governor launched last March. While some of the changes can be made administratively, Gov. Patrick said he will also propose legislation to consolidate, eliminate or change some of the 31 boards under the Division of Professional Licensure, removing what he described as obstacles and impediments to small business owners maximizing their opportunities.

As part of the overhaul, the Massachusetts Department of Transportation plans to make it easier to access MassDOT property for curb cuts and other construction access by standardizing the evaluation process for requests, and the Department of Revenue will streamline its process for granting tax return extensions to make the tax process easier for an estimated 71,388 small businesses. The Department of Environmental Protection is finalizing 21 regulatory reforms that Commissioner Ken Kimmell said will help the agency better deal with budget cuts that have led to diminished staff, avoid duplication and incentivize environmental improvement projects. Developers will also no longer have to seek permits to hook up to a local sewer system from both the state and the local licensing board, and the DEP will focus instead on the overall health of the sewer system. Additionally, the DEP will standardize the permitting process for removing dams, piloting new technologies and "daylighting" streams by removing culverts or other obstructions to encourage projects generally seen to have benefits to local environments.

The Governor is expected to file his bill on January 18.

### **NY: Governor Cuomo Delivers 2013 State of the State Address**

On January 9, Governor Andrew Cuomo (D) commenced the 2013-14 legislative session by delivering his much anticipated third State of the State address. Entitled "New York Rising," the Governor outlined plans and goals for this legislative session, including economic development, education, progressive agenda, public safety, government reform and responding to Hurricane Sandy. Gov. Cuomo also emphasized the fact that he would not be including any increase in taxes for the upcoming fiscal year.

In his progressive agenda, the Governor stressed the need for New York to increase the minimum wage from \$7.25 an hour to \$8.75 an hour without any mention of indexing minimum wage to inflation. The building code will also be reexamined to better prepare the State's infrastructure for future natural disasters. In discussing New York's economic development, the Governor stressed higher education as a job generator, reducing business costs through workers' compensation and unemployment insurance reform, making NY the leader in the clean tech economy, concentrating on preparing the next generation for the workforce and putting additional focus on upstate economic development.

### **VA: Governor's Transportation Plan = Sales Tax Fairness and a Higher Sales Tax**

On January 8, Virginia Governor Bob McDonnell (R) announced, as part of a state transportation funding overhaul, a plan to replace the state's \$0.175/gallon gas tax with a 0.8% increase in the state's sales tax and dedicate that portion of the sales tax to transportation. Virginia's current sales tax rate is 5%. In addition to the gas tax and sales tax, the Governor called on the 113th Congress to pass the Marketplace Equity Act and included the estimate sales taxes not collected as part of his overall transportation plan.

The highlights of the Governor's plan are:

- Eliminate the current 17.5 cents per gallon motor fuels tax on gasoline (the tax on diesel remains)
- Replace the current gas tax with a 0.8 cent increase to the Sales and Use Tax (SUT) dedicated to transportation
- Dedicate an additional .25 cent of the state's portion of the existing SUT to transportation
- Increase vehicle registration fees by \$15 and dedicate the revenue to intercity passenger rail and transit
- Impose a \$100 annual Alternative Fuel Vehicle Fee and dedicate the revenues to transit

The Virginia Legislature is currently in session and is expected to make amendments the Governor's plan should it choose to enact a transportation funding reform law.

## Upcoming Days at the Capitol:

- January 22 - Richmond, Virginia
- January 29-30 - Minneapolis, Minnesota
- February 5-6 - Tallahassee, Florida
- February 6 - Annapolis, Maryland
- February 12 - Olympia, Washington
- March 5 - Austin, Texas
- March 21 - Denver, Colorado

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](mailto:lalusic@icsc.org).

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