

Home Builders Association of Connecticut

2011 State Legislative Summary

The CT state legislature met from January 5 to June 8, 2011, and showed its schizophrenic tendencies by passing both anti-business and pro-economic development and regulatory reform laws. Bewildering to small businesses struggling to survive, a tax and spend state budget was adopted early on, imposing the largest tax increase in state history. The inability to adopt real cuts on state spending (versus merely a reduction in the increase) does not send a friendly message to individual and business tax payers. A first-in-the-nation paid sick leave mandate for certain employers also does not tell the business community we're open for business.

And, frustrating all business interests, including the HBA, was the continuing lack of controls by certain committee chairs to turn away bills that would enact more regulatory controls or more mandates on businesses and economic and housing development. The HBA had to expend tremendous resources and time fighting on defense – AGAIN; amazing if CT wants to win the economic competition game. While many of these bills were eventually defeated, committee chairs have the power to stop them at the outset by refusing to schedule them for a public hearing. Their annual failure to do so creates tremendous uncertainty, holding back investment in CT because small business owners have learned to distrust government and fear more will be heaped onto their backs.

On the other side, several positive economic development bills were passed. There were good changes to business investment funds that support start-ups and the growth of companies, major brownfield development reforms, a transfer of Bradley and other state-owned airports to a new AP Authority with an economic growth mission, and a new energy policy that garnered wide-spread support designed to finally lower electric bills. **On specific HBA of CT bills, despite some losses, the legislature gave our regulatory reform package a favorable reception (see below).**

The HBA read all 3,146 proposed new laws, tracking about 200 of them that would have some impact on our industry. We aggressively participate in shaping the outcome of these bills by writing testimony and position papers; testifying at public hearings; working the hallways and talking with legislators, their staff and coalition friends; drafting amendments; and activating our grass roots member contacts with legislators. We hold an important Home Building Industry Day at the Capital bringing together many members and legislators in a message delivering blitz at a logistically critical time in the legislative process, and we aggressively pursue a public relations and media strategy to positively affect our advocacy efforts.

Following are the more significant bills tracked by the HBA. HBA proposed bills are in bold (SB=Senate Bill; HB=House Bill; File No. means a bill passed a committee and was sent to the floor of either the House or Senate for further action; PA = Public Act, passed both chambers).

2011 Legislation That Passed

SB 859 (File 160, as amended by Senate “A”) (PA 11-5): An early victory for the HBA, this bill extends permit expiration deadlines for subdivision, site plan and wetland permits by four years. Permits under current law expire after 5 years; In 2009, they were temporarily extended by one year; this bill extends to 9 years (with an additional discretionary 5 years up to a total of 14 years) for all approvals in place upon the effective date of bill (i.e., May 9, 2011 – the date the Governor signed the legislation) and for all approvals obtained up to July 1, 2011.

SB 860 (File No. 504, as amended by Senate “A”) (PA 11-79): Fixes several issues re: local land use commission performance bond processes that are designed to guarantee subdivision and site plan improvements are completed. The bills allows developers to offer alternate surety in addition to performance bonds – if the form is acceptable to local commissions. Also, if letters of credit are offered, the financial institution on which the LOC is drawn must be approved by the commission. The bill allows the build-down of the surety (i.e., begin development work prior to posting a bond or surety, so that the amount of bond or surety is lower when it is posted). But, in every case, the bond or surety must be posted prior to transfer of the first lot in a subdivision or issuance of a CO for a site plan. The bill states that from the date a developer requests the return of its bond or surety, the municipality must return it within 65 days or state what needs to be done to complete improvements. Finally, the bill stops the practice – done in only two towns of which we’re aware – of requiring cash bonds for the long-term or lifetime maintenance of roads, streets and other public improvements. This bill is effective October 1, 2011.

HB 6540 (File No. 808, as amended by House “A”) (PA 11-___): Sections 14 and 15 incorporate HBA’s proposals to streamline State Traffic Commission (STC) permits. For residential developments, the bill: changes the STC threshold from 100,000 sq. ft. to over 100 homes for projects that must go to the STC for a Certificate of Operation (i.e., for any residential only subdivision or site plan containing 100 or fewer homes, you do not need an STC Certificate of Operation; requires the STC to review permit applications concurrently with local approvals to the extent practicable; changes the prohibition on getting a building permit to getting a certificate of occupancy prior to obtaining the STC’s Certificate of Operation for only residential subdivision lots that do not directly access or abut a state highway; and clarifies what the STC/DOT can review or require of an applicant, limiting required improvements to “impacts to highway safety created by the addition of the applicant’s proposed development or activity.” Finally, DOT Encroachment Permits for direct access to state highways is no longer mandatory in all cases; they’ll be required at the discretion of DOT as DOT does not want to process encroachment permits for every little driveway on a state highway. These changes are effective on the date the Governor signs the bill.

SB 6618 (File No. 544, as amended by House “A”) (PA 11-___): A Dept. of Public Health (DPH) bill containing many sections on different programs; one section (House “A”, sec. 536) deals with water well testing requirements. The original section was strongly opposed by the HBA and the Realtors. It essentially removed all constraints on DPH and health directors to order well tests if they suspect contamination. We opposed the open-ended authority because the tests that could be ordered (e.g., radionuclides, pesticides, herbicides or organic chemicals) could cost thousands of

dollars. The DPH, Realtors and HBA reached agreement to clarify and appropriately limit testing requirements in the final bill (i.e., section 536 of House Amendment “A”). Effective Oct. 1, 2011.

SB 913 (File 76) (PA 11-52): Mandates that certain employers with 50 or more employees in the state provide certain employees with paid sick leave. Eligible employees (defined in the law) would begin accruing sick leave at the rate of one hour per 40 hours worked as of January 1, 2012. Also, the employee must have worked for the employer for at least 680 hours, and have worked an average of at least 10 hours a week for the employers in the most recent complete calendar quarter. The bill excludes manufacturers and certain tax-exempt organizations, and does not require covered employers to provide paid sick leave to day, temporary or salaried workers. Employers that offer other types of paid leave accruing at the same level as this bill requires are considered to be in compliance. *Many thanks to CBIA for the early summary of this bill.*

HB 5526 (File No 852) (PA 11-___): Original bill required a new DEP permit for permission to develop any tract with 200 acres or more of woodland. HBA strongly opposed. Env't. Comm. turned bill into a new permit program for commercial quarries near a town center designed to stop one quarry in the town of Bozrah.

HB 6651 (PA 11-48): part of the main budget implementer bill, one section (originally HB 6316) streamlines business registration by creating a one-stop portal at the Secretary of State to help businesses register, determine permitting and licensing requirements, and access state financial incentives and programs.

2011 Legislation That Died

HBA supported the following bills and will resurrect many of these bills in future sessions:

HB 6400 (File 196): This major HBA priority bill would streamline DEP’s stormwater (SW) permit by allowing certain SW professionals to certify to DEP – which DEP must accept – that SW general permit registrations meet all requirements. House leadership decided to not call the bill due to late (last 3 days of session) objections by licensed engineers. While a disappointing loss, the HBA is continuing to work with DEP to streamline its proposed new SW general permit for construction activities.

SB 869 (File 163): Establishes a minimum 3-year period in which to do subdivision and site plan work authorized by a wetland agency. Current law has no minimum time frame, even though permits are valid for 5 years. While the Planning & Development Committee (P&D) and Senate passed it unanimously, the House did not take up the bill for debate.

SB 487 (File 661): Clarified that municipalities cannot adopt building construction standards that vary the State Building Code. HBA agreed to amendment addressing concerns of low income tenant advocates and AG’s office about impacts on local housing codes. Passed unanimously by P&D and the Public Safety Comm., the bill was not taken up by the Senate.

SB 1020 (File 168): A joint proposal with a coalition of water companies and business interests, it balanced DEP’s authority to enact stream flow regulations with other concerns. See HB 6505 under bills HBA opposed, which gave DEP more stream flow regulatory authority.

No Bill No.: We proposed a fix to open space exactions in subdivision law. Open space fees, or combination of fees and land required are limited to 10% of the value of the subdivision prior to approval; but if only land is required, there's no statutory limit and some towns take 30%, 40%, even 50% of your land as open space; some apply these large percentages to buildable land, i.e., after deducting wetlands, steep slopes, ridgelines, etc., effectively taking greater than 50% of your property. This proposal was not taken up by the P&D Committee.

HB 5743, HB 5741 and HB 5758: All HBA bills to exempt a home builder's employees from real estate licensing law. Neither 5743 and 5758 was scheduled for a public hearing, despite legislative sponsors in each committee assuring us they would. HB 5741 was only half of our proposal (i.e., a consumer notice but not the exemption we sought). Due to strong Realtors' opposition, no action was taken on these proposals in either committee.

SB 491: Prohibits a public hearing on subdivision or site plan application if a public hearing was already held on a connected zone or regulation change request. P&D committee leaders did not put on an agenda for action because SB 896 below did more; we were told if SB 896 ran into trouble, the intent was to use 491's language as a substitute – that did not occur.

SB 896 (File 218): Would send all site plans to professional staff for decisions; authorizes all subdivisions to be handled by professional staff; prohibits all public hearings on both, and requires a decision in 65 days. Council of Small Towns and Planners Assoc. strongly opposed.

SB 1030 (File 693): Allows judges to award damages, costs and attorney fees if an appeal of a land use decision is found by the court to be without just cause and taken solely for delay. While the Judiciary Committee passed it 43-2, and P&D passed it 16-0, late in the legislative process, both trial attorneys and environmental groups opposed the bill.

HB 6507 (File 491): Provides applicants to DEP for Water Quality Certifications (WQC), which are necessary for other permits, such as Army Corps sec. 404 wetlands permits, a right to a hearing and a right to appeal the WQC decision. Env't. Comm. passed bill with amendment to also allow aggrieved parties the right to appeal a DEP decision; HBA supported original bill, and supported a strict definition of aggrieved party offered by CT Bar Association.

SB 1115 (File No. 455): One section repeals DEP's stream channel encroachment program. Bill passed Env't., Judiciary and Transportation Committees and the Senate; House did not act on it.

SB 686 (File 204): One section had similar language to HB 6540 requiring STC to coordinate reviews with local approvals and, therefore, was not necessary. Another section requires a study of CT's land use permitting system, with intent to address other permitting issues in the next session, but was not necessary because Senate Co-Chair of P&D, Sen. Steve Cassano, said we'd study these issues anyway.

Major bills HBA opposed and successfully defeated:

SB 832 (File 422): The 5th year in a row some form of this legislation appeared; created 100' buffer (no-touch zone) next to all watercourses to protect upland vegetation. Env't. Committee added a not

seen before new mandate on zoning commissions to also protect waterway buffer areas through zoning regulations. P&D Comm later killed the bill.

HB 6505: Expanded DEP's stream flow regulation authority; see alternative SB 1020 above.

HB 6378: Mandated fire sprinkler installation in all new 1&2 family homes.

HB 6296: Mandated automatic adoption of Nat'l Electrical Code, and certain other model codes, into the State Building Code. The HBA submitted code amendment proposals to the Codes & Standards Committee on May 29 seeking changes to both NEC codes.

SB 1168 (File 461): One section of this large bill dealing with electric vehicle infrastructure required all new residential and "certain commercial" construction to support bidirectional charging circuits (40 amp, 240 volt) in order to power all makes and models of electric vehicles.

HB 6544 (File 343): In this large energy efficiency bill, the HBA opposed two sections, i.e., mandatory home owner energy audits as pre-condition to sale, and a provision allowing municipalities to require Energy Star residential construction. Both provisions were not included in the massive 273 page energy policy bill, Emergency Certified Bill 1243 (PA 11-___).

SB 931: Changed definition of hoisting equipment requiring a licensed operator from 5 tons and 32' reach, to 500 lbs and 10' reach. The bill also repealed exemptions for smaller buildings.

HBA testified in opposition to a number of P&D bills, such as, HB 5049 authorizing municipalities to regulate tree removal; HB 5479 creating greater restrictions on 8-30g applications; SB 991 requiring all subdivisions to be energy efficient subdivisions, HB 5097 requiring wetland agencies to state on record whether training requirements are met – possibly subjecting decisions to jurisdictional problems, and more. All died in committee with no vote.

Numerous bills amending, attacking 8-30g (affordable housing appeals act) in the Housing Committee died without action, a new 1% RE conveyance tax to support open space and other programs, and many other adverse changes were opposed by the HBA.

To see a more complete legislative report as well as the extensive work the HBA does in state agencies, go to www.hbact.org and click State Gov't Affairs – News & Updates. All members should feel free to contact the HBA of CT with any questions, comments or suggestions.

See next page for HBA of CT's state agency work:

HBA's STATE AGENCY WORK

At DEP: New construction stormwater general permit & related endangered species referrals (comments due by July 1; public hearing held June 23); engaged legal counsel to intervene and challenge permit; CT Fund for the Environment also intervened to raise several technical issues and oppose HBA's endangered species argument; CT Developers Council meeting on topic held April 7. A schedule of meetings with parties to intervention (HBA, DEP and CFE) is schedule through the summer into Sept. A status hearing with the administrative hearing officer will be held late Sept, followed by another hearing to present arguments and testimony. A final determination should be made by the end of the year; Appeals to court likely to follow. **HBA is raising money for our Gov't Action Fund (GA Fund or GAF) to support our intervention and likely court appeals.**

Other DEP issues: Low impact development (LID) project and how it gets worked into stormwater GP; stream flow regulations; endangered species reviews for private projects; green building standards/incentives; permitting for advanced treatment (AT) sewer systems; and water quality certifications. HBA continues to meet with new DEP commissioner and staff to address all these issues.

Army Corps of Engineers: New changes to the CT General Permit for discharges to US Waters – will affect more developments; HBA attended public information hearing on March 3 at DEP to track progress and inform members.

DPS/Codes & Standards: Transition of codes functions from Dept of Public Safety to the new Dept of Construction Services will take place July 1, 2011; may impact resources available to industry and the public and will have to be tracked closely. The 2009 IRC is under review- stair geometry issue resolved; fire sprinkler mandate resolution not final but looking good for HBA's interests; HBA submitted extensive documentation with request to exempt the sprinkler mandate out of the code. The 2009 IECC should be adopted by Fall 2011 – minor fixes to language need first be amended into the code, then submitted back to legislature's Regulations Review Committee by the new Commissioner of Construction Services. Codes & Standards announced that the rest of the 2009 ICC code family will be skipped and they'll proceed to adoption of 2012 ICC family of codes. They'll also skip the 2008 NEC and go direct to the 2011 NEC; HBA filed a code amendment request to change certain provisions in both model NEC codes on May 27. Work with fire sprinkler task force on practical limitations to fire sprinkler installation – thanks to Bob Fusari, Sr. who is an active participant on the sprinkler task force; Work with CAUC (coalition for adoption of unified code) on all code issues.

DCP: HBA will meet new Commissioner, address any issues with NHCC and HIC registrations.

Office of Policy & Management: New proposed process for adopting the state plan of conservation & development needs review and comment.

DPH: Lead-paint issues; Waste water/septic issues; water supply issues; and water well testing requirements (see new requirements in HB 6618 above); HBA tracks all issues as they arise.