

VIEW FROM THE HILL



1st Quarter 2009

A new two year legislative cycle began in January under a growing cloud of economic uncertainty. With available tax revenues for the current fiscal year down \$2 billion lower than the estimate used to build the budget in July, lawmakers have scrambled to address the shortfall. In October Governor Patrick made \$625 million in cuts to addresses a \$1.4 billion budget gap. But with capital gains down, a rising demand for state services and an additional \$150 million in spending for snow and ice removal, the task of balancing the budget has grown increasingly difficult. Lawmakers have resisted mid year cuts to local aid which accounts for \$5 billion in annual spending. With the fiscal 2010 budget process set to begin in a few weeks, it is likely that much of the legislative agenda will revolve around cost savings and tax collection. Transportation also promises to be a high priority as lawmakers grapple with proposals to streamline state agencies, increase the gas tax and raise turnpike tolls.

Six new Senators and fifteen new Representatives were recently sworn into office including thirteen who won open seats that lawmakers gave up. Over the next few weeks freshman legislators will vie for office space as committee assignments are dolled out by legislative leadership. Nearly 6,000 new bills must be sorted out, numbered and referred to committee before a new legislative session can kick into high gear.

Among the bills filed by GBREB is a bill to establish a right of first refusal process for the sale of federally subsidized affordable housing more commonly known as “expiring use” properties. Since the 1960’s, the federal government has supported the production of low-income rental housing by giving subsidies to private owners of multifamily housing. The “expiring use” issue arises because the affordability of housing units receiving these subsidies is not permanently assured. After a set period of time, owners are allowed to convert their building to market rate.

Historically, GBREB has only supported the notion that the property would become market rate by operation of law, with no additional burden on the property. This legislation is the first time in its 120 year history that the Greater Boston Real Estate Board has ever supported a legislative solution to this issue. The GBREB legislation embraces the concept of a “Right of First Refusal,” and uses as its foundation legislation passed by the Senate and seriously considered by the House in the waning days of 2008. The bill was drafted by a diverse group of owners and their attorneys who met over many months to consider the myriad of legal issues that these expiring contracts pose.

GBREB has also filed several bills aimed at reducing costs for the multifamily apartment industry including mandatory rent escrow and two bills regarding eviction proceedings. While the full scope of new legislation is still unknown, the real estate industry is sure to face threats to private property rights and economic development.

One regulatory issue resolved in January was limiting the use of ionization type smoke detectors. The change comes after several months of deliberations on the type of technology allowed-ionization vs. photoelectric smoke detectors. Ionization type smoke detectors use radiation to detect smoke by sensing the particles created by combustion. Photoelectric type smoke detectors use a light source to detect smoke by sensing the visible particles of smoke that are able to scatter light.

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Under the new regulations only photoelectric smoke detectors will be allowed within 20 feet of an entryway to a kitchen or bathroom containing a bathtub or shower. The 20 foot requirement includes and extends into common areas of a multi-family dwelling. Smoke detectors located outside this area must use both ionization and photoelectric technology, either as a single detector or two separate detectors. The regulations would give consumers a year to comply, by taking effect on January 1, 2010. The change mirrors an existing provision of the state building code which prohibits the installation of ionization smoke detectors. By placing the same requirement in the fire code older homes built prior to 1975 are captured.

GBREB successfully opposed an earlier version of the regulations that would have placed additional liability on owners, property managers and Realtors during a fire inspection and required compliance by October of 2008. Additional guidance on how to comply with the new regulations is provided on pg.....