

# VIEW FROM THE HILL



## 1<sup>st</sup> Quarter 2010

The first year of a two year legislative cycle has ended on Beacon Hill, with several key victories for the real estate industry but with much work remaining before legislators formally adjourn in August. In 2009 GBREB was successful on several fronts-both residential and commercial.

**Tax on commissions-**Among the hundreds of amendments filed to the House budget was a proposal to impose a 5% new sales tax on services. Had it been adopted, labor sold to the public in any trade could be captured within the definition of service. Virtually all real estate services would have been subjected to a sales tax, including: brokerage commissions, attorneys fees, credit reports, mortgage origination, surveys, appraisal fees, home inspection fees, title fees, construction services, architectural services, and site preparation.

**Commercial building code-780 CMR 4308** required any commercial building built prior to 1975, with a floor area of 20,000 square feet or 50% of the total floor area of a building undergoing remodeling or rehabilitation to conduct a structural review and seismic load analysis of the entire building. The regulations were being triggered by routine tenant renovations as simple as painting or installing new carpet. GBREB was a key supporter of an amendment eliminating this requirement for non-structural work. In comments before the Board of Building Regulations and Standards, GBREB successfully argued that this requirement has imposed extraordinary hardships on the commercial real estate industry in cases where tenant space was turning over, delaying deals and adding significant cost.

**Energy costs-**GBREB intervened in a regulatory rule making proceeding before the Massachusetts Department of Telecommunications and Energy, specifically intervening in an electricity rate case involving National Grid to decouple their rates. Under the policy known as “Revenue Decoupling,” utility companies would be protected against a reduction in revenue resulting from consumers using less energy. This savings, instead of coming to the consumer who used less, would be diverted to the utility as a benefit to them for supporting conservation efforts in general. This guarantees revenue to the utility indefinitely based on past usage, even if the current demand is reduced. GBREB opposed the method of decoupling proposed by National Grid, and was somewhat successful in keeping rates low when the decision was returned in early December.

**Affordable housing-**At the end of the year, lawmakers passed a sweeping right of first refusal “expiring use” law. For the first time in its history GBREB filed legislation dealing with Expiring Use properties, and was deeply involved in the negotiations over this new law. Many of these properties have affordability restrictions that will terminate in the next several years, and are eligible to become market rate units. Under the proposed bill, the Department of Housing and Community Development or its designee is given 90 days to purchase an expiring use property and a 30 day right of first refusal to match any purchase contract for the sale of the property. Properties that preserve affordability are exempt from this provision. Although not perfect, many owners believed that this outcome was far better than many that had been proposed over the last 20 years. GBREB was given a seat by the Legislature on the group that is tasked with drafting the regulations and implementing this new law.

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Occupancy tax-GBREB scored a decisive victory for all members who broker, develop and own rental housing. GBREB defeated a proposal to capture single family homes and short term corporate apartment rentals under the Commonwealths room occupancy tax. GBREB successfully argued that unlike hotels, corporate apartments are rented months at a time through the execution of a lease establishing a classic landlord tenant relationship, and are therefore different than hotels and should not be subject to the same taxation.

Stormwater Regulations-Under the proposed regulations, privately owned commercial, industrial, institutional and multifamily residential properties would be required to construct extensive new stormwater management systems. The regulations dramatically expand the scope of the regulations beyond new construction or sensitive wetland areas to require retrofitting of existing buildings. Such retrofit measures would be required in connection with routine property capital maintenance. Owners unable to comply with the new requirements because of site restraints would be required to purchase stormwater mitigation credits from willing private owners or apply to Department of Environmental Protection for a discretionary variance. The Greater Boston Real Estate Board opposed the regulations which still remain before the DEP.