



## Recent state legislation and its impact on the industry

October 03, 2008 - New York City

In the recent state legislative session REBNY was very active on a wide range of initiatives that will benefit our members and the industry and will strengthen the city's economic health in a time when it is much needed. I'd like to highlight two major legislative items and note a few other important new laws.

One of the most important pieces of legislation for commercial real estate was the Industrial and Commercial Incentive Program (ICIP) extension to March 2011. This tax benefit program encourages commercial, retail, and industrial development in the five boroughs. With the robust development activity throughout the city, ICIP came under criticism from those who thought with the city's economic prosperity that the program's benefits should be significantly reduced. REBNY pointed out that there were many commercial areas of the city that were not as robust as Manhattan south of 60th St. and still needed these benefits. For instance, office development in the boroughs still struggles to compete for tenants with other parts of the region. As a result of our efforts, the 25-year new construction benefits for office development in the boroughs were retained.

Likewise, retail development in the boroughs faces many of the high costs of development in Manhattan without the volume of sales that sustain Manhattan locations. There were those who believed that retail development no matter where it is located is successful and does not need benefits. We pointed to numerous successful projects in Queens, Brooklyn and the Bronx, whose development and ultimate success was the result of the tax exemption benefits they received.

In addition, we were able to retain renovation benefits for Manhattan commercial (primarily office) projects. Renovation benefits are crucial for upgrading industrial loft buildings to office space, for modernizing existing buildings with new technology, HVAC and façades in some cases. The benefits of this program have made this revitalization work possible.

For those familiar with ICIP, you need to note a number of important changes to the program. This tax benefit program is now called the Industrial and Commercial Abatement Program (ICAP) and has been changed from an exemption of assessed value based on physical improvements to an abatement of taxes based on increases in value during the construction period. Some other changes in this tax benefit program include the benefit period begins at the end of construction as opposed to the beginning.

REBNY also supported another economic development proposal that promotes office development in the boroughs. The Relocation and Employment Assistance Program (REAP) extension provides a credit against business taxes for moving employees to the boroughs, to Northern Manhattan and, in some cases, Lower Manhattan. REAP is designed to offset some of the high costs of doing business in the city and to make the boroughs more competitive with New Jersey for back-office space.

The other major legislative action was significant changes in the Brownfield Cleanup Program

(BCP). The BCP was enacted to spur the redevelopment of brownfield sites across the state by offering tax credits for the clean-up and an uncapped amount of development tax credits tied to the projects cost of development. Though a number of major projects in New York City and Upstate applied to the program, there was concern that the cost of the program was unsustainable, especially as we faced a weakening economy. As a result of these concerns, the state appeared to stop reviewing new applications and finally enacted a law to suspend new applications to the program for 90 days. To revive the program, REBNY recommended that current projects already accepted into the program should not have the tax cap placed on them. This recommendation was incorporated into the law that imposed a \$35 million dollar cap on the development tax credits for projects and a \$45 million cap on new industrial projects. In addition, the new legislation increases the clean-up credits by as much as 50% according to the state. We are hopeful that these changes will continue to offer sufficient inducement to builders to clean-up brownfield sites.

In addition, the legislature enacted another environmental law, The Green Roof Tax Abatement. This pilot program provides a one-year tax abatement for the construction of a "green roof" on a class one, two or four building. The abatement would equal \$4.50 per s/f of green roof, limited to the lesser of \$100,000 or the building's tax liability for the year in which the abatement is taken. This program expires March 15, 2013.

Another law important to commercial owners is the extension of the REIT Transfer Tax Reduction. This law allows a continuation of the 50% reduction in the transfer tax on the sale of property to a REIT if the seller takes back REIT shares for 40% of the equity and holds the property for two years. The transfer tax reduction was set to expire in September 2008.

REBNY also supported the Commission in Escrow Act. This law requires that the seller of real estate place the broker's commission with the county recording office if the broker makes such a request. Unfortunately, there are sellers who refuse to pay the commission owed, resulting potentially in lost revenue and frequently costly litigation for the broker and their firm. This law provides a less costly method of protecting the broker's commission.

Through REBNY's efforts and the support of the governor and the legislature a number of our key initiatives have become law. These legislative actions will provide an economic boost in a time when it is needed.

Steven Spinola is the president of the Real Estate Board of New York, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540