



STATE AND LOCAL LEGISLATIVE UPDATE

OCTOBER 29, 2010

NAA's Government Affairs staff actively monitors hundreds of state and local legislative issues that affect all aspects of the multifamily rental housing industry. Throughout 2010, state and local lawmakers have proposed thousands of measures that directly impact the financial bottom-line and business operations of NAA members nationwide. Below is a summary of four high-profile, industry-relevant legislative issues that lawmakers at both levels worked to address in 2010. NAA believes these issues will continue to rank high on state and local lawmakers' agendas beyond this year as well.

Bed Bugs

The recent and alarming proliferation of bed bugs has captured national media attention and prompted reaction from lawmakers across several states in 2010. While impacting all sectors of real estate, bed bug infestations are particularly problematic for the apartment industry, as difficulty in pinpointing the origination of an infestation often leaves apartment owners and managers responsible for costly eradication procedures.

In March, Maine became the first state in the nation to enact a law that clearly defines the rights and responsibilities of landlords and tenants in regard to addressing bed bug infestations. Apartment industry stakeholders also witnessed the signing of legislation by Illinois' governor in June that requires a task force to recommend to state lawmakers best practices for preventing, managing and controlling bed bug infestations.

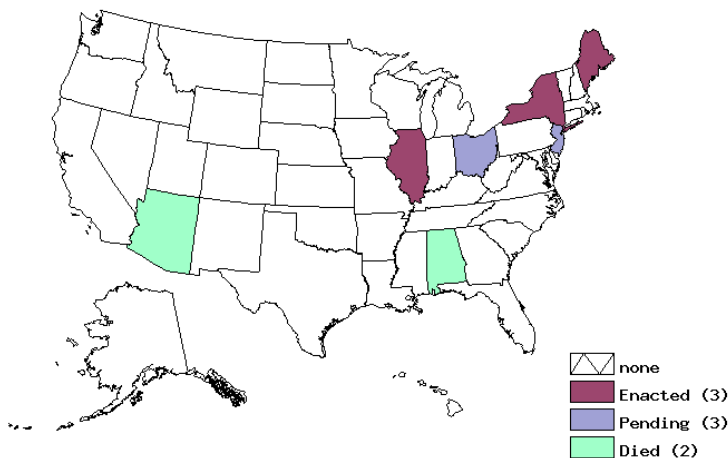
Another significant bed bug-related law of impact to the apartment industry is New York's Bed Bug Disclosure Act. Approved in August by Gov. David Paterson (D), the law requires apartment owners within the city of New York to disclose to potential residents the property's bed bug infestation history for the previous year. Owners are required to disclose this information regardless of whether previous infestations have

been verifiably eradicated. The law's enactment sets a major precedent in regard to bed bug legislation targeting apartment owners and is likely to spark the introduction of similar measures nationwide in 2011.

During states' 2010 legislative sessions, lawmakers in Arizona, Alabama, New Jersey and Ohio introduced measures aimed at addressing bed bug infestations in apartment communities, though none of the bills are likely to advance before year's end.

Given the rise in national media attention surrounding bed bug infestations, NAA antic-

ipates that state and local lawmakers will push to address the issue legislatively for the foreseeable future. In fact, a number of NAA affiliates have expressed their intent to proactively pursue bed bug-related legislation in 2011.



Source of Income

As fallout from the Great Recession lingers, state and local lawmakers are directing much of their attention toward providing relief to constituents struggling through an economic downturn that shows little indication of near-term recovery. In 2010, lawmakers in at least four states and Miami-Dade County, Fla., introduced legislation aimed at prohibiting apartment owners from refusing to enter into lease agreements with persons based solely upon their status as a Section 8 beneficiary. Lawmakers in at least three other states considered legislation aimed at providing some form of housing related protections to these individuals.

While bills intent on codifying “source of income” protections for Section 8 beneficiaries were unsuccessful in advancing in the Hawaii, Rhode Island and Washington State Legislatures, lawmakers in New York successfully passed such a measure through both of the state’s legislative chambers. Despite strong bipartisan support, New York Gov. David Paterson (D) vetoed the measure in August, citing “the heavy burden it would place on small New York property owners at a time when they are struggling to pay their mortgages.” In his veto message to the bill’s sponsor, Paterson went on to enumerate the litany of “onerous” administrative and financial hardships apartment owners endure when providing housing to Section 8 beneficiaries, noting the bill’s implementation would deter individuals from investing in affordable housing.

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Legislation similar to the measure vetoed by Gov. Paterson was considered for the second time in as many years by the Miami-Dade County, Fla., Board of County Commissioners in 2010. NAA worked in conjunction with the Southeast Florida Apartment Association and the Florida Apartment Association to defeat the measure, which was withdrawn from consideration by its sponsor in June.

Source of income protections for Section 8 beneficiaries exist in 12 states and at least 20 municipalities nationwide. For reasons discussed above, NAA anticipates that the prevalence of such proposals will remain high in coming years.

Third-Party Water Billing

Among methods instituted to curb apartments’ energy and natural resource consumption, billing residents for energy usage on a per unit basis, or submetering, remains among the most high profile. While apartment residents have for decades been billed for their actual electricity and natural gas consumption, only since the late 1990s have property owners and management companies employed submetering to calculate and bill residents for per unit water usage.



The sale and delivery of utilities are subject to strict regulations by state and local governments. In fact, utility regulators in some states and localities have moved to curb apartment owners’ ability to submeter water, alleging the practice amounts to the resource’s sale or resale. In such cases, regulators typically require apartment communities to cease the practice or register as a public utility.

Few states, including Massachusetts and Texas, address the issue of water submetering statutorily. In 2010, laws requiring the inclusion and use of water submeters in newly constructed multifamily properties were enacted in the state of Georgia and the city of San Diego, Calif. In addition, California lawmakers considered legislation in 2010 that sought changes to the state’s building code to require all units in newly

constructed apartment communities to be submetered for water billing purposes. The measure was passed by members of the Assembly but failed to advance in the Senate.



NAA is currently working in conjunction with its Missouri affiliate associations to address a complaint filed by the state's public service commission against an apartment owner who employs submetering to bill residents for water usage. The commission maintains that only regulated utilities are lawfully permitted to administer water submetering programs and has ordered the owner to refrain from the practice or register as a public utility. NAA has briefed its affiliates on political and media strategies and has intervened on their behalf as a party to the case.

With increasing concern among the public and lawmakers at all levels regarding the need to curb natural resource consumption, NAA believes elected officials will continue to push for the mandatory implementation of water submetering technologies in apartment communities.

Immigration

No single legislative act did more to propel immigration to the forefront of national political dialogue in 2010 than Arizona Gov. Jan Brewer's (R) signature of SB 1070 in April. Among other things, SB 1070 requires police to check persons' immigration status when conducting a "lawful stop, detention or arrest." A federal judge subsequently blocked that provision of the law from taking effect, issuing a temporary injunction that will remain in effect until its constitutionality is decided in federal court. Nonetheless, SB 1070's passage gave momentum to a multitude of state and local legislative proposals aimed at addressing illegal immigration.

Immigration-related proposals of relevance to the apartment industry considered so far in 2010 include a ballot initiative passed by voters in Fremont, Neb., and an ordinance proposed by members of the Summerville, S.C., Town Council. Both high-profile measures aim to require lessees of residential rental property to purchase an occupancy permit and declare on the application for such permits whether they are in the country legally. Property owners found to have knowingly rented to illegal immigrants in violation of the ordinances would face fines.

In March, a federal district court judge ruled unconstitutional a Farmers Branch, Texas ordinance that contained provisions nearly identical to those provided for within both the Summerville and Fremont ordinances. Again, in September, a three-judge panel of the U.S. Third Circuit Court of Appeals upheld a lower court ruling that blocked implementation of a Hazelton, Pa., ordinance aimed at preventing illegal immigrants from renting real property. In both cases, judges found the measures violated the Supremacy Clause of the U.S. Constitution. The Constitution grants Congress, not states, the power to make laws concerning immigration.

Fremont officials estimated that implementing the city's voter approved initiative in the face of ongoing challenges to its constitutionality could cost taxpayers \$1 million in legal fees annually. In response, Fremont's city council suspended implementation of the ordinance in July. Suspension of the ordinance will remain in effect until questions concerning its constitutionality are resolved in court. Concerns regarding legal costs coupled with lobbying efforts of the South Carolina Apartment Association prompted Summerville's Town Council to table consideration of its proposed ordinance in September.

Despite courts' successive rejection of the constitutionality of such laws, a continued unwillingness by Congress' to enact comprehensive immigration reform is likely to foreshadow continued pursuit by states and localities of legislation aimed at curbing illegal immigration.