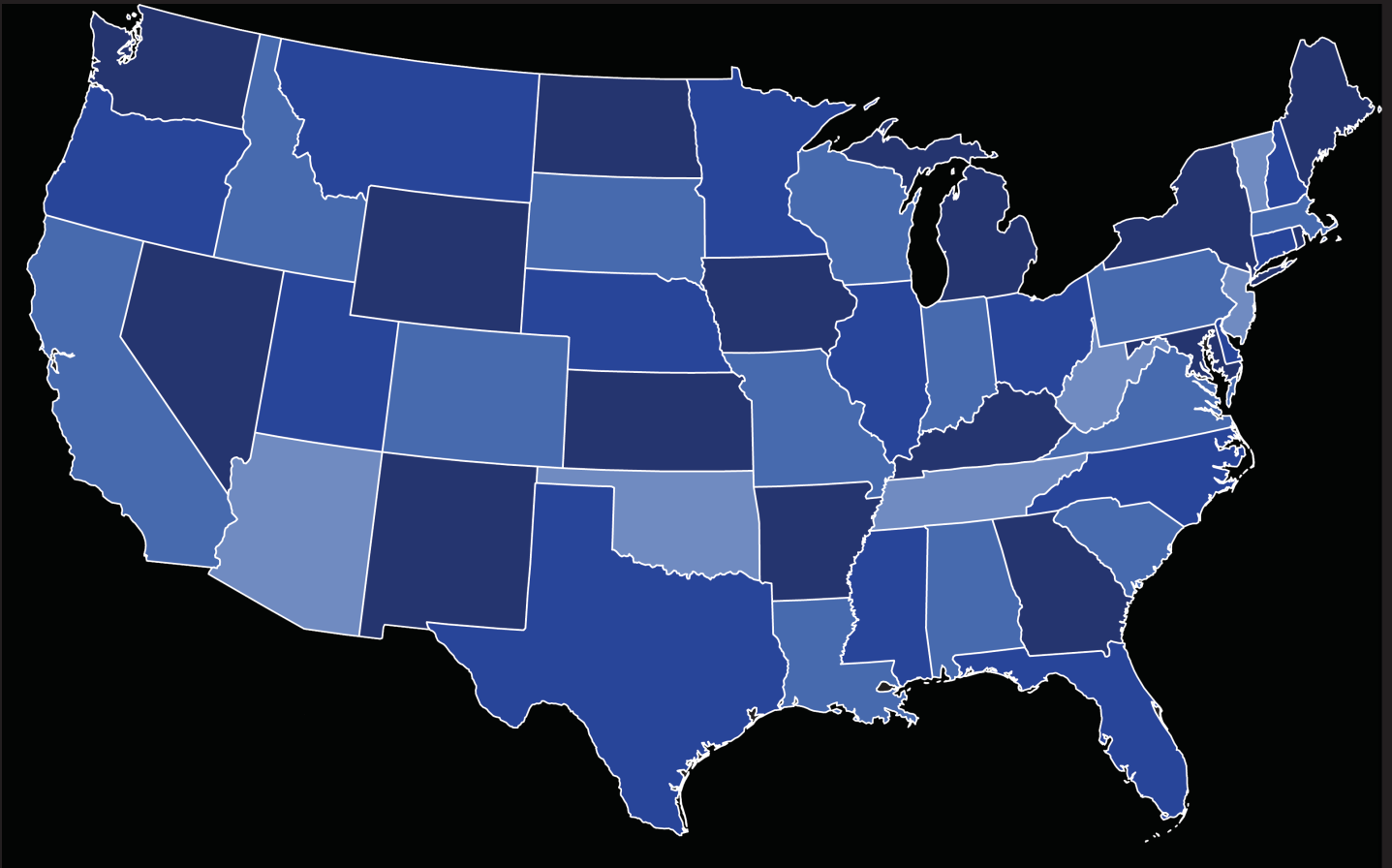


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State & Local Policy Outlook

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STATE AND LOCAL POLICY UPDATE

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With summer at an end, the vast majority of states have adjourned for the year. Six states have already begun the process of pre-filing legislation for the 2012 session. Throughout this year, state and local lawmakers have proposed thousands of measures that directly impact the financial bottom line and business operations of NAA members nationwide. While NAA actively monitors hundreds of these proposals, we focus here on five high-profile issues that lawmakers addressed this year.

State and Local Budgets

Issue

Despite closing cumulative budget gaps of more than \$430 billion over the past four years, balancing budgets continues to remain among the top agenda items of state lawmakers. Nearly half of the states do not anticipate revenues to climb to peak, pre-recession levels until at least FY 2013; in some cases FY 2016.

Exacerbated by sharp reductions in federal and state aid, local governments nationwide are likewise grappling with cumulative budget shortfalls that analysts say could reach beyond \$83 billion by 2012.

Impact

Continued pressure on state and local government finances will force lawmakers at both levels to explore all options for balancing budgets. Those options are likely to include fee increases for public services – including water and trash removal – and the expansion of existing taxes to currently untaxed goods and services.

Examples of legislative deficit reduction tactics specifically targeting the apartment industry include proposals to tax rent payments as a shelter service (Arizona and Alaska currently permit localities and municipalities to tax residential rent payments); special assessments on individual apartment communities to cover “fair share” costs of life safety services; and fee-based rental property inspections programs.

Fair Housing and Employment Protections for Convicted Criminals

Issue

Lawmakers in an increasing number of cities and states are considering legislation that would prevent inquires concerning criminal charges and convictions from appearing on employment and rental housing applications. While similar proposals have aimed to make individuals with criminal records a fully “protected class” — thus banning employers and rental housing providers from considering applicants’ criminal backgrounds in any manner — more limited protections have recently become law. For example, Hawaii and Massachusetts and the city of Philadelphia now prohibit private employers from making any inquiry that aims to determine whether an applicant has been charged with or convicted of a crime until after an initial assessment of the individual’s qualifications has been conducted, such as a first interview.

According to the Reentry Council of San Francisco – an organization dedicated to the societal reintegration of individuals exiting correctional facilities – four cities and one county in two states, Illinois and

Wisconsin, “prohibit discrimination against individuals with an arrest or criminal conviction record in housing.” To varying degrees similar proposals are currently being considered by lawmakers in San Francisco, Seattle and New York State.

Impact

Legislative proposals that prohibit rental housing providers from exercising strict due diligence in all aspects of potential employee and resident screening impose unnecessary and costly impediments to the application process, recklessly endanger the safety of apartment personnel and residents, including children, and expose rental housing owners to legal liability.

Bed Bugs

Issue

In 2010, Maine became the first state in the nation to enact a law that clearly defines the rights and responsibilities of rental property owners and residents in addressing bed bug infestations. Under the enacted statute residents must promptly inform management of bed bug infestations and under certain circumstances may be held liable for the costs of treatment. Also in 2010, New York enacted the Bed Bug Disclosure Act, a law requiring owners of New York City apartments to disclose to potential residents the property’s bed bug infestation history for the previous year. In April 2011, Arizona became the third state in the nation to pass statewide bed bug legislation. This Arizona law enumerates landlord and tenant duties regarding bed bug situations while additionally providing legal liability protection for landlords.

The national trend of bed bug hysteria has been centered in New York City. In response, the city has enacted several new laws that took effect in March. Under these new ordinances, property managers are now required to inspect apartments surrounding an infested unit, notify all tenants of an infestation that occurs anywhere in the building, and distribute a bed bug eradication plan to all tenants. In addition, landlords who repeatedly fail to address bed bug infestations are now required to obtain a sworn affidavit from a licensed exterminator affirming the infestation has been treated. The city’s Environmental Control Board has been given the authority to fine landlords for violations of these ordinances.

State legislators in Alabama, Connecticut, Massachusetts, New Hampshire, New Jersey, North Carolina, Ohio and Pennsylvania also considered, but did not enact, bed bug legislation this past year. In Illinois, a working group has been created and is tasked with making recommendations to the state legislature regarding preventing and eradicating bed bugs.

Given the rise in national media attention surrounding bed bug infestations, NAA anticipates that state and local lawmakers will continue pushing to address the issue legislatively for the foreseeable future. Further, in August HUD issued guidelines delineating landlord/tenant bed bug responsibilities and protocols within federally assisted/insured properties. These guidelines have already affected the legal arena surrounding this issue. NAA will continue to monitor any effects the guidelines may have on state legislation.

Impact

While impacting all sectors of real estate, bed bug infestations are particularly problematic for the apartment industry as the density of units can allow for the quick spread of infestations if they are not reported and addressed quickly. Apartment industry stakeholders report that costs to eradicate bed bugs can easily reach thousands of dollars per unit, which can be amplified if a resident does not cooperate with eradication efforts. These additional operating costs are a further major concern of the industry.

State and local legislative proposals aimed at addressing bed bug infestations in apartment communities have sought to establish both apartment owners' and residents' legal rights and responsibilities. Enactment of such measures will determine when and to what extent apartment owners will be held financially liable for costs associated with eradication procedures.

Source of Income

Issue

Lawmakers in five states introduced legislation in 2011 aimed at prohibiting apartment owners from refusing to enter into lease agreements with persons solely because of their status as a Section 8 beneficiary. Bills intent on codifying "source of income" protections for Section 8 beneficiaries were unsuccessful in advancing through both the Hawaii and Maryland state legislatures. Additionally, procedural exemptions to legislative rules are necessary to advance similar measures through the Illinois and Rhode Island legislatures – an unlikely possibility at this point in the legislative calendar year.

In 2010, New York legislators successfully passed legislation to codify source of income protections within state statute. Despite strong bipartisan support for the bill, New York's then-Gov. David Paterson (D) vetoed the measure, citing "the heavy burden it would place on small New York property owners." That measure is once again being debated by lawmakers in both legislative chambers. The bill has until December 2012 to pass.

Source of income protections for Section 8 beneficiaries exist in 12 states and at least 20 municipalities nationwide. The large number of unemployed individuals and those seeking public assistance foreshadows further efforts by state and local lawmakers to incorporate "source of income" protections into housing discrimination statutes and ordinances in 2011 and beyond.

Impact

Rental property owners lawfully required to accept Section 8 vouchers are subject to federally mandated administrative rules and inspection requirements, which would otherwise not be imposed upon them.

Immigration

Issue

Under the U.S. Constitution, Congress has primary authority to enact immigration law. Until recently, courts have ruled that state and local attempts to regulate immigration are unconstitutional by citing the Constitution's "Supremacy Clause". However, on May 26, the U.S. Supreme Court upheld an Arizona immigration law that targets employers. The Court's ruling in *Chamber of Commerce v. Whiting* rejected the assertion, espoused by opponents of state immigration legislation, that targeting businesses through licensing statutes is preempted by federal law. The ruling upheld the Legal Arizona Workers Act of 2007, which requires the use of the federal E-Verify system to check immigration status and allows the state to revoke an employer's business license if he/she repeatedly hires undocumented immigrants.

Only two weeks after the *Whiting* ruling, the Supreme Court voided the much publicized *Hazelton v. Lozano* ruling handed down by the 3rd U.S. Circuit Court of Appeals. The town of Hazelton, Pa., enacted a law that would punish employers who hire undocumented immigrants as well as landlords who knowingly or recklessly rent to them. The appellate court ruling had blocked the implementation of this ordinance again using a Supremacy Clause analysis; however, now the Supreme Court is sending the case back to the 3rd Circuit for review in light of its ruling in the *Whiting* case. NAA plans to file an amicus brief on the case in November.

Additional legal action on immigration has occurred in Alabama regarding its enactment of H.B. 56, the nation's most comprehensive and punitive immigration law to date. Signed into law earlier this year by Governor Robert Bentley (R), the law contains provisions relevant to law enforcement, employers, schools, rental housing and more. Several groups sued to block the law's enforcement, including the U.S. Department of Justice. In late September U.S. District Court Judge Sharon Blackburn ruled the harboring provisions (penalties for individuals who house or transport undocumented immigrants) in the law are unconstitutional as they are preempted by federal law. However, the fate of other provisions of the law remains undecided.

As Congress has yet to take up comprehensive immigration reform, NAA believes that these recent Court actions may embolden state and local lawmakers to continue pushing to address immigration issues legislatively within their own jurisdictions. NAA also expects an increase in bills mandating the use of the federal E-Verify system.

Impact

Immigration ordinances of primary consequence to apartment industry stakeholders generally require lessees of residential rental property to purchase occupancy permits and declare on permit applications that they are in the country legally. In some cases, these measures have made property owners responsible for collecting and submitting lessees' application materials to local officials. Such provisions effectively require rental property owners to assume the role of federal law enforcement officials. In nearly all cases, property owners found to have knowingly rented to illegal immigrants in violation of these ordinances are subject to fines. The Alabama statute assigns criminal penalties.

Such penalties are not the only serious consequences for multifamily properties. If use of E-Verify is mandated there is the potential for "false negatives" and additional delays in filling vacant units as the application process would be slowed as property managers take additional steps to screen for legal status. Screening for legal status also raises the potential for fair housing issues. All of these problems add to apartment firm operating costs. Finally, in light of the Supreme Court ruling on the Legal Arizona Workers Act, property owners doing business across multiple states could potentially face a complex patchwork of rules and regulations for compliance with state and local immigration laws.

For further information regarding these issues, and to determine ways in which NAA can assist you with state and local government affairs activities, including strategy development and model state legislation, please contact the NAA State and Local Government Affairs team or visit us online at www.naahq.org/governmentaffairs/statelocal.

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