

Building Owners and Managers Association
2017 State Legislative Report
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The 2017 Maryland General Assembly has adjourned, but issues affecting BOMA members continue to reverberate. This year, we saw a number of bills that targeted the interests of our members and the commercial real estate industry. Some issues related to those bills will be addressed by the BOMA Legislative Committee over the next few months. Other issues are likely to reappear in the 2018 Legislative Session. And because we are now officially in election season (all 188 seats in the legislature, plus the Governor and Comptroller, are up for reelection in 2018) partisan politics may also play a role. Here are some of the issues we have dealt with in 2017:

HB 1550 - Landlord and Tenant - Action for Repossession of Commercial Property - Service of Process

The issue addressed by this bill bubbled up from an unexpected source. In the usual conduct of our business, legal action for money damages and to evict a tenant is occasionally necessary. Often a landlord will choose a private process server, rather than a sheriff for service of process. Some judges, in some counties, have interpreted state law to limit the use of a private process server to Wicomico County only.

BOMA took the lead, and was joined by our fellow commercial real estate associations in Annapolis, in seeking legislation to address this problem. This bill would expand the express authority to use private process servers, for commercial property only, to all counties. In our view, it simply clarified the law and permitted the longstanding use of private process servers to continue. During the Session we learned that some sheriffs objected to our initiative. We also understood that some legislators would not consider the bill in the face of this objection. Therefore, we asked Delegate Beidle to withdraw the bill for this year.

We will be meeting over the summer with other interested groups, such as the National Association of Industrial Office Properties (NAIOP), the Apartment and Office Building Association (AOBA), and the Maryland Multi-Family Housing Association (MMHA) to discuss the issue and forge a collective effort for legislation in 2018.

HB 468 - Procurement - Prevailing Wage - Application to Leased Properties

This bill is a variation of legislation that appears regularly in Annapolis. It would expand the use of Maryland's prevailing wage law to many contracts on property that is leased either by the state or a local government. BOMA members own and manage properties that frequently have government tenants, so our direct concern was the prospect for a substantial increase in the cost of tenant buildouts if the bill were to pass.

The Maryland prevailing wage law establishes a government standard for wages on certain projects. Typically, it is higher (often much higher) than wages paid under competitively bid contracts. As drafted, HB 468 would have required the payment of prevailing wages on any contract where either 55% or more of the property is leased by government, or the government lease measures more than 20,000 square feet. The bill expressly required the payment of a prevailing wage irrespective of whether any public money would be used for the construction. BOMA and NAIOP strongly opposed this bill. In addition to the increased costs, we pointed out that the bill would disrupt existing relationships that our management companies have with both outside contractors and employee contractors. Ultimately, the bill did not pass.

SB 177/HB 1226 - Public Safety - Elevator Inspections - Testing

With SB 177, an old issue became new again. In 2009, BOMA was the primary advocate behind legislation that was intended to correct a longstanding backlog of elevator inspections in the state. That year, inspections by third party inspectors rather than state inspectors were authorized for the first time. The law also authorized inspections to be performed subsequent to the annual testing required of elevators under state law, rather than be physically present during

the test. This was done for the sake of efficiency, because it was extremely difficult to have inspectors and mechanics on site at the same time. It was also determined in 2009 that a subsequent inspection would not jeopardize elevator safety. Since 2009, this process has worked smoothly.

SB 177 would revert the process to one where the inspector must be physically present to witness the test. Joined by our commercial real estate colleagues, BOMA vigorously objected to turning back the clock with SB 177. Union representatives of the elevator mechanics, together with one inspector, lobbied for the bill using public safety as their primary argument. We pointed out, through a number of workgroups and individual meetings, that 1) there is no safety issue of any description that proponents of the bill could cite, 2) requiring the mechanics performing the test and the inspector to be simultaneously present would present enormous logistical challenges, and almost certainly, would lead to increasing the backlog of elevators needing inspection, and 3) that the additional time required for both mechanics and inspectors to be present would significantly increase costs.

In most years, our arguments would have been sufficient to kill the bill (it has been introduced in previous years without success). This year, however, the persistence of union advocates, together with a desire by legislators to work out a “solution,” kept the bill alive through most of the Legislative Session. Although the Department of Labor, Licensing and Regulation joined us in opposing the bill, and it did not pass this year, we expect to see its return in 2018.

SB 520 - State Real Estate Commission - Property Managers - Registration

SB 520 is another example of a solution in search of a problem. Some realtors, supported by their state association, sought to regulate the business of property management with this bill, which would require property managers to be registered with the state Real Estate Commission.

BOMA and other commercial and residential real estate organizations strongly opposed this bill. Our primary argument, as with elevator inspections (see SB 177 above) was that no problem existed that needed to be solved, and that SB 520 would simply impose a brand new regulatory burden on an industry that did not need it.

In discussions with the bill sponsor, we learned that his primary objective was to capture the individual property manager, or “Joe down the street,” as he put it. In other words, the real target of the regulatory scheme under SB 520 was quite different from professional property managers like members of BOMA and other professional property managers. We managed to secure an agreement from the bill sponsor for an amendment excluding commercial properties from the scope of the bill, but we were pleased at the ultimate outcome when the bill did not pass out of its assigned committee.

Other Legislation of Interest

BOMA also monitored other legislation that may have an impact on its members. HB 1, the Maryland Healthy Working Families Act, is legislation strongly opposed by many small businesses. It would require all businesses to provide mandatory paid or unpaid sick leave (the bill also provides for leave unrelated to the illness of an employee). It would potentially affect over 300,000 persons employed by businesses with fewer than 15 employees and 1.9 million persons employed by larger employers. Although many of these businesses may currently have some leave benefits, this bill establishes a minimum threshold. While BOMA did not take an official position on the bill, we recognize that it may have an adverse effect on our smaller members. The Legislative Committee will continue to monitor the issue, and we note that Governor Hogan has until the end of May to decide whether to veto the bill or allow it to become law.