BOMA: Advocating Commercial Real Estate's Business Case

A 2016 Report
The Building Owners and Managers Association (BOMA) International is a federation of 91 BOMA U.S. associations and 17 BOMA international affiliates. Founded in 1907, BOMA represents the owners and managers of all commercial property types, including 10.4 billion square feet of U.S. office space that supports 1.8 million jobs and contributes $227.6 billion to the U.S. GDP. Its mission is to advance a vibrant commercial real estate industry through advocacy, influence and knowledge.

BOMA International is a primary source of information on building management and operations, development, leasing, building operating costs, energy consumption patterns, local and national building codes, legislation, occupancy statistics, technological developments and other industry trends.

BOMA's recent advocacy victories will save the commercial real estate industry BILLIONS in prevented costs.

The permanent extension of the 15-year leasehold depreciation period is estimated to save the industry $4.93 BILLION over the next 10 years.

The extension of the energy-efficiency tax deduction (179D) is estimated to save commercial real estate $320 MILLION over the next 10 years.

IMAGES ON COVER
Top Right: BOMA/Georgia’s Mark Schroeder, Gabriel Eckert and Mark Dukes meet with Georgia State Rep. Joe Wilkinson (second from left) and Speaker of the Georgia House of Representatives David Ralston (right) at the Georgia Statehouse. Bottom Left: BOMA/Columbus’ Dave Hoeffel, Steve Stoner, Bill McCarthy, Lindsay Hach, Gary Rickel and Karen Knies (front) visit with state leaders in Columbus, Ohio. Bottom Right: BOMA/Los Angeles members meet with Los Angeles City Council Member Joe Buscaino (center).

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INTRODUCTION

The Shifting Landscape of Capitol Hill

Conventional wisdom holds that the first year of the two-year congressional session will be the more productive one, as legislators are focused on the issues and not on the next campaign cycle. And, sure enough, in early 2015, Congress got off to a lightning fast start. After playing a political game of “cat and mouse” throughout 2014 and allowing the Terrorism Risk Insurance Act (TRIA) to expire on December 31, 2014, lawmakers jumped into action during the first week Congress was in session. The 114th Congress (2015-2016) convened on January 5, 2015, and two days later, the House passed H.R. 26, which would extend the federal terrorism risk insurance backstop program for six years; the next day, the bill was passed in the Senate. On January 12, President Obama signed it into law. In addition to extending the program through December 31, 2020, the legislation also gradually increases the loss threshold that triggers federal assistance under the program, from $100 million to $200 million. The extension of TRIA was a tremendous victory for the commercial real estate industry.

In April 2015, another BOMA-supported bill, legislation to create a “Tenant Star” program, was passed by Congress and signed by the president. The Tenant Star program, which will be developed and implemented by the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA), will provide resources and research on energy efficiency in tenant spaces by establishing best practices for commercial tenants and creating a benchmarking program for energy use in leased spaces.

The year came to a close with another huge victory for commercial real estate. With the passage of the massive tax bill known as the PATH Act, 15-year leasehold depreciation was made permanent, the energy-efficiency tax deduction (179D) was extended and changes were implemented to the Foreign Investment in Real Property Tax Act (FIRPTA) to spur foreign investment in U.S. real estate.

Despite these welcome wins in 2015, election season began even earlier than usual as the race for the White House started in earnest over the summer. Soon after, on September 25, Speaker John Boehner (R-Ohio) abruptly announced his retirement, sending Washington into a frenzy and giving the Republican Party the opportunity to do some soul searching to find a new leader who might be able to restore unity to the splintered party. A somewhat reluctant Rep. Paul Ryan (R-Wis.) stepped up and was elected Speaker of the House in October, leaving his chairmanship of the House’s tax-writing committee up for grabs. This position was later filled by Rep. Kevin Brady (R-Texas).

INDUSTRY IMPACT

The commercial real estate industry is a significant driver of the nation’s economic engine:

$71.7 BILLION
In personal earnings created by the industry

$82.4 BILLION
Spent on building operating expenditures

$227.6 BILLION
Contributed to the U.S. GDP by CRE

Office buildings support 46.6 MILLION office workers—a number exceeding the population of California.
Expectations for 2016 and Beyond
What does this shift in House leadership mean to BOMA? Time will tell, but right out of the gate, Speaker Ryan indicated that more legislation would make it to the House floor for a vote. In recent years, former Speaker Boehner’s policy was to only let bills come to the floor after the whip count showed it was likely to pass. Speaker Ryan plans to be more transparent in the process, meaning he also will allow legislation to fail. In addition, we expect tax reform to once again be on the agenda at some point in the future, though it most likely will not be tackled until after the 2016 elections. This was a top priority for Ryan when he was at the helm of the Ways and Means Committee, and he still hopes to make tax reform a reality. In the last session of Congress, proposals and discussion drafts were floated in both the House and the Senate to get the debate started, but no substantive action ensued.

This annual report highlights just some of BOMA’s priority issues. More information on all of our issues, as well as our formal policy positions, can be found under the Industry Issues section of the BOMA International website at BOMA.org. We encourage you to get involved; we always are looking for passionate volunteers to serve on the advocacy- and codes-related committees at BOMA International and through BOMA local associations. A key to BOMA’s success on advocacy issues is our dedicated grassroots force!

BOMA HAS ISSUES
This report highlights just a few of the many issues we track and lobby. BOMA International has established policy positions, which can be found under the Industry Issues section of the BOMA International website (BOMA.org), on many more issues, including:

**ENERGY AND THE ENVIRONMENT**
- Energy-Efficiency Tax Incentives
- Energy Use Data Acquisition Benchmarking
- Lead in Paint
- Water Efficiency and Conservation
- Storm Water Management

**TAX AND FINANCIAL ISSUES**
- Tax Reform
- Carried Interest
- Capital Gains
- Fire Sprinkler Tax Incentives
- Foreign Investment in Real Property Tax Act (FIRPTA)
- Leasehold Depreciation
- Roof Tax Incentives
- “Like-Kind” Exchanges

**OTHER LEGISLATIVE ISSUES**
- Immigration
- Labor Policies/Preserving a Democratic Workplace
- Catastrophe Insurance
- Terrorism Risk Insurance
- Metal Theft
- Building Security and Emergency Preparedness
- ADA Notice and Compliance
- Patent Reform
- Unmanned Aircraft Systems (Drones)

**CODES AND STANDARDS**
- Development of National Model Building Codes
- Local Adoption of Model Codes
- Energy Efficiency and Green Building Codes
- Accessibility Codes and Standards
- Firefighter Air Replenishment Systems
- Luminous Egress Markings
- Sprinkler Retrofits
In 2015, Congress tackled a mountain of critical issues to keep the U.S. government’s lights on, to maintain the country in good debt standing and even to help maintain our roads. Congress completed an impressive punch list with an election year looming.

Surprisingly, the leadership shake-up did not delay the larger tasks at hand. Before handing over the reins of the House to Paul Ryan, Speaker Boehner sought to, in his words, "clean the barn." Congress passed a continuing resolution, or CR, to continue to fund the government until December 11 and avoid a federal government shutdown. Boehner then negotiated a two-year bipartisan budget agreement, which passed Congress in late October and was signed by President Obama. The bill addressed the debt ceiling issue and will keep the U.S. government from going into default until March of 2017. The bill also lifted the across-the-board budget cuts, known as sequestration, which have been in place since 2013. Additionally, the deal set spending limits for the government. While a huge step in avoiding a government shutdown, this meant that Congress still only had six weeks to strike a budget deal to beat the CR's December 11 deadline.

BOMA’s top tax priority—leasehold depreciation—became the centerpiece of the most unexpected victory of the year. In the fall of 2015, the Senate Finance Committee passed a 52-provision tax extenders bill out of committee, and one of the provisions was for an extension of the 15-year depreciation period for leasehold improvements. Meanwhile, on the other side of Capitol Hill, the House Ways and Means Committee voted to move a bill to permanently reduce the leasehold depreciation timeline, from 39 years to 15 years—for the first time ever. However, the leadership shuffle prevented the tax bills from getting any floor time. Then, in November, President Obama threw a bit of a wrench in the process, saying he would veto any bill that did not directly reform the individual tax code, as well as the corporate code. The Protecting Americans from Tax Hikes (PATH) Act of 2015 emerged as a compromise package between the parties, making permanent 15-year leasehold depreciation a reality, while also making significant fixes to the Foreign Investment in Real Property Tax Act (FIRPTA), doubling the ownership stake a foreign entity can hold in a U.S. REIT before triggering the tax and exempting foreign pension funds from the tax completely. In mid-December, the bill passed both chambers easily in tandem with an omnibus spending bill to fund the government through September 2016. The passage of the PATH Act marks a historic victory for BOMA’s advocacy efforts.

As anticipated, Congress chose not to address comprehensive tax reform in 2015, and it is likely on hold until after the 2016 elections. While a more streamlined approach to our nation’s tax code sounds like good policy, many of the drafts put forth in the recent past have not been kind to commercial real estate. At least three high-profile proposals...
put forward since 2013 have sought to eliminate Section 1031 of the tax code (or “like-kind” exchanges); others have increased the depreciation period on leasehold improvements; and the fight over carried interest has sparked favor in both Republican and Democratic circles alike. The good news is that, with the presidency, 34 Senate seats and all of the House seats up for grabs, no major efforts are expected to be made in 2016 to pursue any of these proposals. 2016 will be a huge year for politics, but it might remain a quiet year for policy. BOMA International will continue to work with our partners in real estate and with legislators to ensure that the financial concerns of the commercial real industry are heard loud and clear.

**AT THE VOTING BOOTH: SOME SURPRISE RESULTS IN OFF-YEAR ELECTIONS**

On November 3, 2015, Republicans picked up a governorship in Kentucky and easily held onto the governor’s office in Mississippi. Louisiana was the only other state with a gubernatorial election in 2015; in a runoff election on November 21, Democratic State House Minority Leader John Bel Edwards easily defeated Republican U.S. Sen. David Vitter, becoming the only Democratic governor in the Deep South.

In one of the biggest surprises of Election Day 2015, Matt Bevin, a political novice and Tea Party favorite, became only the second Republican in four decades to win the governorship of Kentucky. Some considered the vote a referendum on the national healthcare law and on same-sex marriage. He defeated two-term Democratic Atty. Gen. Jack Conway to succeed Democratic Gov. Steve Beshear, who was termed out of office.

Republican Mississippi Gov. Phil Bryant easily won re-election to a second term, defeating Robert Gray, a truck driver, by a margin of more than two to one.

Only four states held general legislative elections on November 3. Most attention focused on the battle for control of the Virginia Senate, where Republicans held off a major effort by Democrats to win a majority, keeping their 21 to 19 edge. A gain of just one seat by Democrats could have changed control of the upper chamber of the Virginia General Assembly because Democratic Lt. Gov. Ralph Northam would have been the tie-breaking vote. This was a significant setback for Democratic Gov. Terry McAuliffe, leaving him without legislative leverage in the final two years of his term. In the Virginia House, Republicans maintained their majority.

Republicans also maintained their majorities in both chambers of the Mississippi and Louisiana legislatures, while Democrats held onto their majorities in both the New Jersey House and Senate.

**Mayoral Elections**

More than 300 cities across the United States held elections for mayor, including Houston and Philadelphia, the nation’s fourth and fifth largest cities, respectively.

In Houston’s nonpartisan election, there were seven candidates competing to succeed Mayor Annise Parker, who is term-limited.

The two candidates with the most votes moved on to a runoff on December 12, and Texas State Rep. Sylvester Turner edged out businessman Bill King, a former mayor of a Houston suburb.

Democrats hold a seven-to-one voter registration edge over Republicans in Philadelphia. Jim Kenney, a Democratic former city council member, defeated Republican business executive Melissa Murray Bailey to succeed term-limited Mayor Michael Nutter. During the campaign, Kenney had pledged to increase efforts in the fight on poverty and provide universal pre-kindergarten.

Voters in Salt Lake City elected challenger Jackie Biskupski, a former state lawmaker, over incumbent two-term Mayor Ralph Becker in a surprise upset. Although Becker spent heavily on his campaign and had a number of endorsements from prominent Democrats and Republicans, Biskupski ran a grassroots campaign that was focused on change at City Hall. Elsewhere in the country, voters in San Francisco; Indianapolis; Columbus, Ohio; and Charlotte, North Carolina, all elected Democratic candidates.

**Ballot Measures**

Voters in Texas approved an amendment to the state constitution that is estimated to raise approximately $2.5 million annually for road and highway improvements, beginning in 2017. The measure was designed to divert general and vehicle sales tax revenue towards a highway fund when collections exceed certain thresholds.

Mississippi voters defeated a proposed constitutional amendment that would have mandated “an adequate and efficient” public school system, allowing people to sue the state to increase funding for public schools. Critics of the measure maintained it would have taken budget decisions away from Mississippi lawmakers and given the courts too much power. At present, state funding for schools has fallen short of what is required under state law.

In San Francisco, voters approved a measure to create a $310 million fund for much-needed affordable housing. Proposition A will enable city officials to sell $310 million in affordable-housing bonds to develop and maintain housing for the city’s low- and middle-income households.
## LEGISLATIVE INITIATIVES

In the last session of Congress (2013-2014), several energy bills were introduced, but no major energy legislation was successfully enacted. One bill of interest was the bipartisan Energy Savings and Industrial Competitiveness Act (ESIC), introduced by Jeanne Shaheen (D-N.H.) and Rob Portman (R-Ohio). In February of 2015, the senators introduced a narrower version of the bill, known as the Energy Efficiency Improvement Act of 2015 (S. 535), and in March, they reintroduced the Energy Savings and Industrial Competitiveness Act of 2015 (S. 720). S. 720 has been approved by the Senate Committee on Energy and Environment, but it is still awaiting floor action. S. 535 saw remarkably quick action in both the House and Senate and was signed into law on April 30, 2015.

Of interest to the commercial real estate industry, this new public law requires EPA to develop a voluntary “Tenant Star” program within the ENERGY STAR® program to recognize tenants in commercial buildings that voluntarily achieve high levels of energy efficiency. EPA also may develop a voluntary program to provide resources and to recognize commercial building owners and tenants that use high-performance energy-efficiency measures in the design and construction of leased spaces.

BOMA International has continued to aggressively advocate for an extension and improvement of tax incentives for energy-efficiency retrofits to new and existing commercial buildings. 179D deductions expired at the end of 2013, but they were renewed retroactively for 2014 through the “tax extenders” package passed in late December 2014 and allowed to expire again on December 31, 2014. The law provided for an accelerated deduction of up to $1.80 per square foot for energy-efficient upgrades that achieve a 50 percent reduction in annual energy cost to the user, compared to a base building defined by the ASHRAE/IESNA 90.1-2001 Standard. However, BOMA International would like to see this deduction improved, not merely extended. Legislation drafted in the 113th Congress proposed to increase the maximum deduction to $4 per square foot for existing building retrofits. It utilized a sliding scale, which allows greater deduction amounts as correlated to higher levels of energy savings and performance; and the energy savings would be calculated based on the building’s own pre-retrofit baseline. The draft legislation also would have extended the deduction for an additional three years and implemented a “REIT fix” to allow REITs and LLPs with limited or no federal tax liability to take advantage of the incentive. Unfortunately, this is one of the many tax bills that didn’t see any action due to the pending tax reform effort. While this issue was widely discussed in 2015, there was no progress on introducing improvements to the program. However, a two-year extension of the former program was included in the PATH Act passed in December 2015.

In early December, the North American Energy Security and Infrastructure Act of 2015 (H.R. 8) became the first
comprehensive energy bill to pass the House. H.R. 8 contains some key changes to the role that DOE can play in the energy codes process, which BOMA strongly supports. The bill seeks to advance DOE’s role as a technical advisor in the process and limits DOE’s support of proposals to ones that can show a simple 10-year payback period, making them financially viable in the marketplace. There is no word on when the Senate will take up similar legislation in 2016.

At the state and local level, one of the energy issues that continues to spread quickly is mandatory energy benchmarking and disclosure requirements for commercial buildings. BOMA continues to encourage our members to benchmark with the ENERGY STAR Portfolio Manager tool, but we believe this should be a voluntary program. BOMA also advocates for utilities to provide whole-building aggregate data upon request. Without that data, multitenant buildings with separately metered tenants are often unable to benchmark, and an accurate picture of the building’s performance cannot be assessed.

IN THE AGENCIES

Increased scrutiny of EPA has contributed to new regulations being issued at a much slower pace, as the agency needs to ensure that it has completed all the regulatory procedures and hurdles before moving forward with controversial rulemakings.

EPA’s anticipated lead renovation, repair and painting rule is one of the issues that has seen several delays as a result of this slowdown. BOMA International testified at a hearing in June 2013 and twice has been selected to serve as a small business entity representative—only to see that process stalled. Proposed regulations had been expected by July 1, 2015, with final action by December 31, 2016, but we are still waiting for the process to resume.

The long-anticipated, EPA-proposed regulation on post-construction storm water runoff was expected in March of 2014; however, the agency announced it would refocus its resources to address more targeted storm water challenges. EPA’s shifted goals are to “focus on a suite of immediate actions,” resulting in enforcement or legal action in smaller jurisdictions overseen by local environmental boards, as opposed to the U.S. court system, with few or no options for appeals. The agency’s commitment to a national storm water rule was the result of a settlement with the Chesapeake Bay Foundation, and it remains unclear what this shift will mean for the agency’s fulfillment of its legal obligations pursuant to the litigation.

One result of this shift away from the national storm water rulemaking was a proposed rule to clarify the definition of “Waters of the United States” (WOTUS). WOTUS is an essential, yet highly contentious, term in the Clean Water Act. After the Army Corps of Engineers and EPA jointly released their proposed ruling in the spring of 2014, BOMA International joined with other real estate organizations and submitted comments to EPA regarding the potential new precedent for water regulations. EPA’s proposed water rule would blur the definition of “Waters of the United States” as defined and regulated by the Clean Water Act. This ruling would impact municipal separate storm sewer systems (MS4s) and storm water runoff regulations. BOMA’s coalition submitted comments urging EPA to reiterate that “Waters

In 2015, BOMA International was recognized for an eighth time with an ENERGY STAR® Partner of the Year Sustained Excellence Award. BOMA remains the only commercial real estate association to have earned this honor.
of the United States” do not include MS4s or its components. While our concerns were favorably addressed in the final ruling, which was released in the spring of 2015, it already has been the subject of several lawsuits. Despite the newly outlined parameters of what constitutes a WOTUS, excluding MS4s by definition if not in name, the rule is highly unpopular both in courts and Congress. The White House has declared that it will veto any legislation to strike this regulatory rule. However, the furor could possibly unite enough members of Congress to overturn the threatened veto. Court cases to toss out the rule are pending in multiple courts.

BOMA will continue to work with an alliance of industry partners and legal counsel to monitor and respond to both of these issues.

PUBLIC-PRIVATE PARTNERSHIPS HELP MOVE MARKETS

Seven years ago, BOMA International was one of the founding members of the Better Buildings Alliance (originally called the Commercial Real Estate Energy Alliance, or CREEA), a public-private partnership. BOMA, DOE and a small number of the prominent national commercial real estate companies that were leading the charge on sustainability joined forces to see if they could identify the “game changers” that would transform the energy marketplace—and the commercial real estate industry. BOMA continues to have a voice on the steering committee.

Now, the Better Buildings Alliance (BBA) is more than 200 members strong, representing more than 10 billion square feet of commercial real estate in seven key market sectors: commercial real estate, healthcare, hospitality, retail, food service, public and higher education. BBA members commit to addressing energy-efficiency needs in their buildings by setting energy-saving goals, developing innovative energy-efficiency resources and adopting advanced cost-effective technologies and market practices. Members agree to participate in at least one BBA activity each year and share their successes with their peers, while DOE commits to connect members with technical resources and provide a platform for peer exchange. The types of activities members can participate in include testing out an implementation model, joining a technology adoption campaign or participating in a technology challenge or demonstration.

Since 2009, the program has become closely aligned with President Obama’s Better Buildings Initiative and...

**Take the LEEP.** In the fall of 2012, BOMA International, the International Facility Management Association (IFMA) and the Green Parking Council (GPC) joined forces with DOE and BBA to launch the Lighting Energy Efficiency in Parking (LEEP) Campaign. The LEEP Campaign is a program offering guidance and recognition to facility owners interested in implementing energy-efficient lighting solutions in their parking garages and lots. In the first year of the program, the LEEP Campaign exceeded its goal of retrofitting 100 million square feet of parking space. In its second year, the total goal of the program was 500 million square feet, and, moving forward, the goal is set at 750 million square feet. Now that the LEEP Campaign is in its third year, BOMA, IFMA, GPC and the International Parking Institute (IPI) have taken over the management of the program from DOE, though DOE does continue to offer technical support. The results speak for themselves: Up to 70 percent reduction in energy costs and up to 90 percent reduction in maintenance costs add up to a quick payback for parking facility owners. For more information, visit www.leepcampaign.org.

**Shout from the Rooftop.** In 2013, DOE and BBA launched a campaign in conjunction with ASHRAE and the Retail Industry Leaders Association (RILA) to promote energy-efficient rooftop unit (RTU) air-conditioning systems for commercial and industrial buildings, schools and retail. The Advanced RTU Campaign (ARC) encourages building owners and managers whose buildings use rooftop air-conditioning units—often buildings that are four stories or under—to change out older units with units that are approximately 60 percent more efficient than those from 10 years ago or retrofit their existing units with controls that can reduce energy usage by 40 percent. The program handed out its first recognition awards this past spring and winners achieved an estimated combined energy savings of more than 100,000,000 kWh and $10 million per year from their efficiency RTU replacements and retrofits. ARC estimates that, if all 10- to 20-ton commercial units were replaced with today’s more efficient units, businesses would save $1 billion each year in energy costs. BOMA International is a supporter of this program and we are assisting DOE and RILA to provide information about the program’s benefits to BOMA members. More information can be found at www.advancedrtu.org.

**Embrace a Bright Idea.** The natural next step after the creation of the LEEP Campaign was for DOE and BBA to shine a light on lighting interior spaces. As nearly every building relies on some sort of interior lighting, this was an energy- and cost-saving opportunity too important to ignore. The Interior Light Campaign (ILC) originally aimed to help building owners and managers replace 100,000 troffers with high-efficiency troffer lighting by May of 2016. But, after initial success, its goal now is to replace one million troffers, or roughly 100 million square feet of lighted building space. By adapting new troffer lighting, the most common lighting fixtures in office and retail space, energy savings of 60 percent can be achieved. Savings of up to 75 percent can be seen when these retrofits are combined with controls, such as dimmers, timers and occupancy sensors. BBA estimates that, if every troffer in the United States was replaced with high-efficiency troffers, the nation could save approximately $4 billion in energy costs annually. BOMA International is a supporter of this program and will host the first ILC recognition awards at the 2016 BOMA International Annual Conference & Expo in Washington, D.C., this June.

**Get a Tune-Up.** BOMA International also has partnered with DOE and the Consortium for Building Energy Innovation (CBEI) to conduct Building Re-Tuning (BRT) training. Pilot programs were held last year in cities across the United States to fine-tune the curriculum and instruction technique for smaller buildings without building automation systems (BAS). The training now is available through the network of BOMA local associations. Additionally, BOMA International is working to complete a training program for larger buildings with BAS systems, which will be piloted in Atlanta in February 2016 and offered through the BOMA local associations by late 2016.
BOMA has been recognized as an industry leader on accessibility issues since the Americans with Disabilities Act (ADA) passed in 1990. In the more than two decades since the landmark legislation was signed into law, prohibiting discrimination on the basis of disability and guaranteeing the rights of people with disabilities, BOMA International has served on the Americans with Disabilities Act Accessibility Guidelines Review Advisory Committee, the ANSI/ICC A117.1 Standard Committee and a number of other key forums where new accessibility provisions are developed. While the goal of the ADA was maximizing accessibility for all Americans, the bill has had some unintended consequences due to some unscrupulous attorneys who file frivolous lawsuits against building owners citing ADA noncompliance issues. Much of the time, these lawsuits do not seek to remedy the alleged ADA infraction or benefit the needs of the disabled community. The plaintiff is simply looking for a quick settlement, leaving building owners to choose between settling the case quickly or undertaking costly litigation. Neither of these options resolve the disabled community’s interests in fixing the violation.

The frequency of these so-called ADA “drive-by” lawsuits has only continued to grow. From 2013 to 2014, the number of ADA Title III lawsuits, which specifically deal with public accommodation, surged by more than 63 percent, and a small number of attorneys filed the majority of lawsuits. Oftentimes, a single plaintiff will file dozens—if not hundreds—of cases across a geographic area.

Seeking a remedy to this problem at the federal level, BOMA International joined a coalition of real estate groups urging Congress to pass legislation amending the ADA to allow business owners the opportunity to identify and correct alleged violations before the commencement of an ADA noncompliance lawsuit. Due to the misperception of changing the intent of the ADA, this matter has become an unnecessarily partisan issue. Several bills incorporating “notice and cure” language have been introduced in Congress over the past several years and all have met the same fate. Each session, the bills expire without so much as a committee vote. Thus, there was little hope for action this year when Rep. Ken Calvert (R-Calif.) reintroduced the ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act of 2015, the third time such legislation has been introduced.

However, coinciding with the celebration of the 25th anniversary of the passage of the ADA, new life has been introduced into this fight. On October 20, 2015, Congressman Ted Poe (R-Texas) introduced H.R. 3765, the ADA Education and Reform Act of 2015. In addition to a notice and cure provision, this bill includes a section directing the U.S. Department of Justice (DOJ) to train building owners on ADA compliance and a provision permitting courts to punish misleading demand letters with a fine.

Three important factors have given us hope this time around. First, the bill’s sponsor is a member of the House Judiciary Committee, which gives it a better chance to see committee action, such as a hearing or a markup. Second, the coalition of real estate groups involved in the fight have attempted to bring on board some of the disability rights organizations that historically oppose any amendments to the ADA. While they may not come out in support of the legislation, our hope is that they will not oppose it. BOMA is encouraged by this progress. Finally, with Rep. Scott Peters (D-Calif.) signing on as a co-sponsor, this issue now has bipartisan support. Our goal in 2016 is for the bill to receive a committee hearing so that stakeholders can present their case for the need of this important legislation. Such legislation will benefit all parties and maintain the intent and integrity of the law.

IN YOUR DEFENSE

BOMA’s Industry Defense Fund (IDF) ensures that BOMA local associations, state coalitions and BOMA International have the means to battle attacks on our industry. In just the past year, approximately $300,000 have been invested in these efforts, and this investment has paid back dividends in the form of positive precedents being set that can affect jurisdictions across the country. Following are just a few of the recent efforts the IDF has helped to support:

Opposition to Transportation Utility Fee in Mission, Kansas
The IDF helped finance a major effort by BOMA/Kansas City to oppose a Transportation Utility Fee (TUF) issued by Mission, Kansas. This “driveway tax” would have been imposed on developed property, and revenue for the TUF would have been calculated based on how much traffic a property generated. The State Court of Appeals ruled that the TUF was an illegal excise tax, which was a victory for BOMA/Kansas City and the local commercial real estate community.

Legal Challenge to Pittsburgh’s “Safe and Secure Building” Act
The IDF Committee provided funding to BOMA/Pittsburgh in its successful legal challenge to the recently enacted City of Pittsburgh ordinance known as the “Safe and Secure Building Act,” which would have required “covered properties,” including those of BOMA/ Pittsburgh members, to provide safety and security training—at great expense and potential liability—for all building service personnel.

Legal Challenge to Minnesota Uniform Plumbing Code
The IDF Committee voted to help fund an amicus brief appealing the decision of an administrative law judge who had previously upheld the Minnesota State Plumbing Board’s approval of the Uniform Plumbing Code, instead of the International Plumbing Code that was strongly preferred by the business community, to replace a “home-grown” plumbing code.

Opposition to Proposed Linkage Fee in Seattle
IDF funding helped BOMA/Seattle-King County and a broad-based coalition of builders, land use attorneys, housing and urban advocates and other groups to successfully work for the passage of a Seattle ordinance that establishes an agreed-upon framework for an Affordable Housing Impact Mitigation Program. This framework does not include the previous proposed $28-per-square-foot linkage/impact fee that would have dramatically increased development costs in Seattle.
EMERGENCY PREPAREDNESS

BOMA International continues to lead the industry in the area of building security and emergency preparedness. Whether it’s engaging with federal, state and local authorities on active situations or providing building owners with the tools and resources necessary to respond to emergencies, BOMA International takes the issue of securing much of the nation’s critical infrastructure very seriously.

From retrofitting buildings to withstand a natural disaster to conducting drills to prepare for emergency situations, BOMA International members continue to invest heavily in building security and preparedness plans. Building owners are finding ways to protect their tenants and infrastructure, while also thinking about business continuity measures. According to the Federal Emergency Management Agency (FEMA), 40 percent of businesses fail to reopen after a disaster and another 25 percent shutter within one year. It’s more important than ever for BOMA members to invest in resiliency and continuity before it’s too late.

To keep BOMA members informed on the changing landscape of security threats, BOMA International continues to support the Real Estate Information Sharing & Analysis Center (RE-ISAC). Established in 2003, RE-ISAC is a public-private partnership between the U.S. real estate industry and federal homeland security officials, and it serves as the primary conduit of warning and response information between the government and the commercial real estate industry on matters of terrorism and natural hazards. Both accurate and timely, RE-ISAC communications aid BOMA members in responding to any threats that may materialize. This year, RE-ISAC helped BOMA members in Texas and the Northeast monitor periods of extreme weather conditions and provided updates during a number of active shooter situations.

BOMA International’s coordination with authorities doesn’t stop there. BOMA continues to work with officials within the U.S. Department of Homeland Security (DHS), FEMA and the American Red Cross, whether it’s gleaning expertise on issues from the federal government or providing our own input on programs being considered by agencies that might impact the com-

BOMA ACHIEVES SIGNIFICANT SAVINGS IN THE STATES

BOMA Arizona successfully supported state legislation that prevents municipal and county governments from establishing mandatory energy benchmarking requirements for commercial office buildings.

BOMA California successfully defeated a “Right to Rest” bill that sought to restrict private property rights and allow people to rest in commercial building lobbies and other public areas.

BOMA/Greater Charlotte and BOMA/Raleigh-Durham successfully supported legislation that removes a provision for a qualified protest petition and the resulting three-fourths majority vote requirement in a city council from state statutes, and substitutes a process for citizens to submit comments on proposed zoning changes to a local zoning board.

BOMA/Southern Connecticut and BOMA/Greater Hartford successfully opposed legislation requiring certain employers, such as commercial property owners, to provide a 30-hour minimum work week for employees performing janitorial work. The bill would have imposed onerous financial penalties for violations.

BOMA/Denver Metro defeated legislation that would have allowed homeless individuals the right to use and move freely in public spaces—including the lobbies of commercial office buildings, to rest in those public spaces, to eat or accept food in any public space where food is not prohibited, to occupy a legally parked vehicle and to have a reasonable expectation of privacy of one’s property.

BOMA/Georgia successfully supported legislation that makes a tax credit available to commercial property owners for the installation of electric vehicle charging stations.

BOMA/Kansas City successfully supported legislation in Missouri providing for state and local sales and use tax exemptions for all machinery, equipment, computers, electrical energy, gas, water and other utilities, including telecommunication and Internet services, used in new data storage center facilities.

BOMA Minnesota successfully opposed the passage of a proposal in the transportation bill that would have allowed the cities of Minneapolis and St. Paul to impose fees on parking spaces, which would have applied to all downtown nonresidential, public and private parking, with the revenue being used for almost any chosen purpose.

BOMA/Nevada successfully supported legislation to allow building owners to designate an alternate employee to authorize an appeal for a local Property Tax Department, meaning that a property manager can be authorized to sign for the building owner in cases that are being appealed, rather than having to track down the owner, or Board of Directors, within a 48-hour window to allow their appeal to be heard.

BOMA Ohio successfully opposed an amendment to the Fiscal Year 2016 Ohio budget that would have put a two-year moratorium on a popular and important program that provides tax credits to property owners and developers who take on challenging historic preservation projects. The vast majority of those credits support renovations of vacant buildings.

BOMA Washington State successfully opposed a mandatory individual building energy disclosure bill.
commercial real estate industry. In 2012, BOMA International, along with seven BOMA local associations, entered into a partnership with DHS in its “If You See Something, Say Something™” public awareness campaign, which is a simple and effective program to raise public awareness of indicators of terrorism and terrorism-related crime and to emphasize the importance of reporting suspicious activity to the proper local law enforcement authorities. At the beginning of 2015, BOMA International expanded the program to cover more than 20 BOMA local associations.

Through our Emergency Preparedness Committee, BOMA International brings together the industry to address preparedness topics via nationwide teleconferences, seminars and workshops. This year, the committee used National Preparedness Month, sponsored by FEMA, as an opportunity to raise preparedness awareness with property professionals. Each week in September, the committee provided BOMA members with commercial real estate industry-specific resources on topics, including floods, hurricanes, wildfires and power outages. National Preparedness Month culminated with National PrepareAthon Day, and, to celebrate, BOMA International conducted—a tabletop preparedness exercise, and the committee distributed the video to BOMA members.

BOMA International continues to urge members to develop comprehensive emergency preparedness plans for each building they own or manage, and these comprehensive plans should be updated on a regular basis to reflect changing threats and dangers. We also urge BOMA members to participate in the development of an overall coordinated plan for the locality and effective communication networks with governmental entities so that those in the commercial real estate industry can receive timely information to assist in responding to all types of emergencies.

While several changes in the code development process occurred in 2015, one thing remains the same... BOMA’s code advocacy program continues to represent the commercial real estate industry at every step during the process.

ICC and cdpACCESS
The year began with the International Code Council (ICC) implementing the cdpACCESS remote voting process for the development of the 2018 model building codes (I-Codes). Under the new process, all participants involved in the development of the 2018 I-Codes used the cloud-based platform to craft code change proposals and collaborate with other stakeholders. It also allowed code officials who were unable to attend the hearings in person to vote online, increasing participation by ICC members who have heretofore been unable to attend hearings, largely due to constrained local government travel budgets. The 2018 I-Codes will become the first developed using the cdpACCESS platform.

Preparing for this shift in the code development process, BOMA’s strategy moved towards the need to implement a grassroots program focused on engaging our members with their state and local code officials. Throughout the cycle, BOMA local associations received summaries of critical code changes, which they then used to educate and inform local code officials. Based on the outcomes from the hearings, it was clear that BOMA’s outreach to code officials was successful.

Throughout 2015, the “Group A” codes were under development, which include the International Building Code (IBC) and the International Existing Building Code (IEBC). There were a number of code changes submitted to increase the resiliency of

DOLLARS SAVED
Throughout the three-year development cycle of the 2015 I-Codes alone, BOMA representation was instrumental in helping save the commercial real estate industry:

More than $6 per square foot for each existing U.S. building, mostly in avoided costs.
today’s buildings; to align the alteration requirements of the existing building codes with the 2010 ADA guidelines; and to address the growing trend of occupied roofs. Several federal, state and local agencies are becoming increasingly concerned about the magnitude of so-called “superstorms” like Hurricanes Katrina and Sandy and the millions of dollars that are spent in the restoration of devastated communities in the aftermath of the storms. Many industry groups attempted to use this as a platform to suggest decreasing the height and area of buildings and limiting the types of construction materials in areas deemed as high-hazard regions. All of these code changes were disapproved during both the Code Action Hearings (held in the spring) and during the Public Comment Hearings (held in the fall), and they are not expected to be approved during the online governmental voting, expected to be completed in early 2016.

Working with our industry partners at The American Institute of Architects, the National Multifamily Housing Council and the National Association of Home Builders, BOMA successfully pushed for provisions that would keep the dimensional requirements from the 2009 ANSI A117.1 accessibility standard as the referenced standard for existing buildings. While the A117.1 Standards Committee continues to move forward with increasing the clear floor space for wheeled mobility devices, increasing turning radius and enlarging corridor widths, industry partners realized that these changes would significantly impact existing buildings. The proposal that was approved during the hearings would allow existing buildings that currently meet the requirements of the 2009 A117.1 and the 2010 ADA guidelines to remain unchanged and not require building owners to substantially retrofit buildings.

In 2016, ICC begins the Group B code development cycle, which includes code change proposals for the International Energy Conservation Code (IECC) Commercial and Residential, the International Residential Code (IRC) Building and Energy, the International Fire Code (IFC), the International Wild Urban Interface Code (IWUIC) and the IBC Structural.

Several committees have begun comparing the existing requirements of the IECC with those found in ASHRAE Standard 90.1, and it is anticipated that there will be efforts to align these documents. At the same time, a number of proposals will be submitted to the IFC to align it with the proposals that were approved during the Group A cycle to the IEBC. In addition, several code committees will attempt to provide additional language in the fire code to address a perceived need to provide clearer language regarding the proper maintenance and protection of passive fire assemblies, such as fire and smoke partitions and other fire-rated assemblies.

Looking Ahead
In 2016, BOMA’s advocacy team will be facing a number of challenges, as regulatory agencies continue to push for increasing energy efficiency in the codes and standards and also look to find ways outside of the codes arena to improve actual building energy performance. There is an increased interest in utilizing whole-building efficiency systems concepts as the next tool to double down on reducing energy consumption. At the same time, there are other stakeholders who are looking to develop outcome-based energy code provisions, similar to the methods approved in the 2015 edition of the International Green Construction Code (IgCC). BOMA’s advocacy team continues to work with various interest groups to ensure that approved provisions are cost-effective, enforceable and technically feasible.
BOMA MEANS ADVOCACY

The topics covered in this report are just a few of the many issues that BOMA International’s Advocacy, Codes and Standards team—along with a committed network of member volunteers—address throughout the year. We encourage you to visit BOMA.org and subscribe to BOMA International’s e-News to keep up with the latest advocacy issues and be ready to lend a hand as opportunities arise. Also, consider joining the BOMA crowd at the next National Issues Conference (in 2016, we will be taking Washington, D.C., by storm with Capitol Hill visits on February 3), or at a state or local Advocacy Day. Together, we can make a difference!

GET INVOLVED, STAY INVOLVED
Get involved! BOMA International’s Advocacy, Codes and Standards staff is continuously developing and utilizing tools to help us do our jobs more effectively and to help members make their political voices heard. Following is just a sample of the many resources at our disposal, all of which you can read about on the BOMA International website. Check them out. Join a committee. Give us a call. Give your policymakers and code officials a call!

- **BOMAPAC**: BOMA International’s political action committee raises funds (personal contributions from BOMA members) to help support the re-election efforts of members of Congress (U.S. House and Senate) who support the commercial real estate industry. Your support of the PAC allows BOMA’s advocacy staff access to key policymakers and the opportunity to educate legislators on today’s critical issues.

- **Legislative Action Center**: Write a letter to your federal or state legislators, make your voice heard to your local media or make a contribution to BOMAPAC through the Legislative Action Center.

- **State Legislation Action Center**: Find out what’s happening in your state on commercial real estate issues.

- **The Codes Toolkit**: This online resource helps BOMA local associations and members understand the code development process, from the development of the model codes to the adoption of codes at the state and local level. The toolkit also includes resources to help members advocate for or against specific proposed code changes, which are even more important now that ICC has changed the voting protocol to allow for remote voting by code officials.

- **BOMA’s Economic Impact Study**: Where America Goes to Work: The Contribution of Office Building Operations to the Economy details the contributions of the office building industry to the local and national economy. These numbers help us articulate to policymakers (at all levels of government) that the commercial real estate industry supports job creation and represents a significant portion of U.S. GDP, which is why they should take our policy positions to heart. The forthcoming 2016 study will be available later this year on the BOMA International website.

WHAT KEEPS YOU AWAKE AT NIGHT?

We asked that question to members of BOMA’s National Advisory Council—senior executives of large national commercial real estate firms—and here’s what they had to say:

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<td>How do we hold on to our superstars? How do we find qualified engineers? How do we maintain quality control across markets?</td>
<td>What is “big data” and how can we harness its power? How can we best use new technology to smartly and efficiently operate space?</td>
<td>How do we do more with less and still maintain a healthy work/life balance for ourselves and our employees?</td>
<td>How can we find industrial properties in today’s market? Where should we invest based on regional and national market dynamics?</td>
<td>With a piecemeal approach to tax extenders becoming the new normal and constant talk—but no action—on tax reform, when will there be enough economic certainty to make confident long-term business decisions?</td>
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