

U.S. jobs bill could put the pinch on region's developers

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Baltimore lawyer Steve Goldberg says the bill could stymie some deals.

The federal jobs bill to be taken up by the U.S. Senate after its Memorial Day break could mean fewer buildings getting built in Greater Baltimore, where financing is already scarce for new construction projects.

Maryland's congressional delegation supports the jobs bill, which they say is needed to encourage employers to start hiring again and banks to start lending more money to small businesses. But real estate groups fear part of the legislation will have the opposite effect by closing the spigot on real estate financing, which in turn will mean fewer jobs for architects, planners, engineers and contractors.

The bill, passed by the House of Representatives on May 28, includes a provision called carried interest that would tax developers' earnings at a higher rate. If it becomes law, real estate experts say that will make investors less inclined to fund new office, retail or residential projects in the region.

"Anything that increases the costs of doing projects, there are going to be less of them," said Doug Schmidt, partner at Glen Burnie's Chesapeake Real Estate Group LLC.

Legislators are looking to tax developers along with investment fund managers and venture capitalists to raise about \$18 billion, according to Speaker Nancy Pelosi's office. That money would be used to fund a variety of programs including an extension of jobless benefits and the re-

newal of tax breaks for research and development projects. Among the bill's supporters is Sen. Benjamin Cardin, D-Md.

"The economy is still suffering, people are still out of work, and we need to take more action to get people back to work," Cardin spokeswoman Susan Sullam said.

But the carried interest provision cuts to the heart of how development projects get funded and threatens to upset that formula, real estate experts say. Industry groups representing building and shopping center owners are opposing the measure, which could affect more than a million real estate investment partner-

ships across the country, said Thomas Bisacquino, president of NAIOP, a trade group representing industrial and office property owners.

"This is a severe blow to entrepreneurs who would otherwise be contemplating new deals," Bisacquino said. "Candidly, many development projects will now not be taken on due to this legislation."

Carried interest has been considered for years as a way of taxing fund managers at an income tax rate of 35 percent instead of the lower capital gains tax rate of 15 percent. The idea is that fund managers are providing a service and are not

putting any of their money at risk, so the profits they make should be assessed at the higher rate.

Fund managers typically get paid a management fee for their services plus a percent of the profit they make for their clients. That is usually about 20 percent.

Both pots of money are taxed at the smaller capital gains rate, but the 20 percent would be taxed at a higher income tax rate with the carried interest proposal. A real estate developer might get the same development fee and 20 percent profit for his work lining up a construction project for a group of investors that gets 80 percent of the profits.

But unlike fund managers that typically do not have any of their own money on the line, real estate developers put up significant sums of their own money in planning, engineering and development fees with no guarantee they will get any of those funds back, said Steve Goldberg, a real estate lawyer with Gallagher, Evelius & Jones LLP in Baltimore. Frequently those developers also invest part of their own money in the projects, another difference from fund managers.

If that developer now has to pay 35 percent in income taxes on those profits, he or she is likely to want a higher percent of the take to make it worth the effort. But that means an investor has to be willing to take less, which Goldberg said is not likely to happen.

"There's definitely going to be an impact, and it's likely going to cause some deals not to get done that would have gotten done," Goldberg said.