



2011 Government Affairs Federal Issues Agenda

NAIOP
COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

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Legislative Voice

NAIOP, the Commercial Real Estate Development Association, is the leading organization for developers, owners and related professionals in office, industrial, retail and mixed-use real estate.

NAIOP provides unparalleled industry networking and education, and advocates for effective legislation on behalf of our members. NAIOP advances responsible, sustainable development that creates jobs and benefits the communities in which our members work and live. As the recognized leader for commercial real estate, it is our responsibility to further the agenda of commercial real estate by actively working with the elected officials on the legislative issues that affect the welfare of our industry. Through the efforts of our dedicated Government Affairs staff, and the strength of NAIOP's Political Action Committee (NAIOP-PAC), we have successfully organized NAIOP's representation on Capitol Hill, making it a powerful voice for commercial real estate.

The following agenda outlines NAIOP's legislative agenda for 2011 and offers talking points supporting our positions.

NAIOP Government Affairs Team

Thomas J. Bisacchino

NAIOP President

John Bryant

Senior Director of Federal Affairs

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Vice President for Government Affairs

Toby Burke

Senior Director of State and Local Affairs

NAIOP Senior Director of Federal Affairs John Bryant with Senator John Boozman (R-Ark.)



Tax Reform

NAIOP is focused on ensuring that the tax code is supportive of the commercial real estate industry. Legislative debate and action on reforming and streamlining the current tax code will likely begin in 2011. Provisions often presented as “reform,” but that are primarily intended to raise federal revenues, can inadvertently inflict damage to the industry, as was the experience with the passage of the Tax Reform Act of 1986.

NAIOP will work with Congress on developing tax policy changes that promote the economic health of the commercial real estate industry while opposing proposals that may result in undue harm. Legislative changes must be made following a comprehensive approach that takes into account the overall impact on the industry of proposed tax reform changes, rather than a narrow focus on individual provisions that raise tax revenue.

Carried Interest Taxation

Carried interest is compensation provided to a general partner that is tied to the ultimate success of a development venture. This potential compensation is not guaranteed income and should not be compared to salary that is taxable at ordinary income rates. A general partner in a real estate venture is at risk for not only capital contributions to the partnership, but also for all partnership liabilities, such as environmental contamination and lawsuits, and often guarantees construction completion and payment of debts. NAIOP opposes legislative changes to the tax treatment of “carried interest” that would increase taxes from a capital gains rate of 15 percent to rates as high as 35 percent. If enacted, this could significantly hinder development across the country and would be devastating to our members and harmful to the overall economy.

- Approximately 45 percent of all partnerships are real estate partnerships. The partnership structure provides flexibility in allocating the risks and potential rewards of a real estate deal and many real estate partnerships have a carried interest component designed to give the general partner a stake in the success of the venture.
- Proposals to tax carried interest at ordinary income rates without regard to the nature of the underlying investment could adversely impact the flow of capital to real estate deals. It will disrupt the investment relationship between the entrepreneurs and their capital finance partners.
- Effectively doubling taxes on an entire sector of the commercial real estate industry would be devastating to the industry and harmful to the overall economy.



NAIOP President Thomas J. Bisacquino and NAIOP Vice President for Government Affairs Aquiles Suarez address industry concerns with Senator John Cornyn (R-Texas).

Leasehold Improvement Depreciation

Leasehold improvement depreciation, also known as tenant improvement depreciation, is the ability to deduct the cost of the customized improvements a building owner makes to a rental space to configure it for a tenant's needs. The current 15-year depreciation schedule for qualified leasehold improvements needs to be reauthorized at the end of this year, or it will automatically revert to a 39-year depreciation schedule. Failure to extend 15-year qualified leasehold improvement depreciation will result in higher capital costs for many building owners, creating disincentives to upgrade and modernize the space for their tenants.

- Improvements characteristically last five to ten years across all commercial sectors, or the average length of a lease term.
- Increased investment in leasehold improvements has a substantial positive impact upon economic growth.
- According to a 2009 economic study, leasehold improvements supported more than 386,925 jobs and generated \$14.4 billion in personal earnings.
- Fifteen-year qualified leasehold improvement depreciation should be made a permanent feature of the tax code.

Brownfields Remediation Expensing

Brownfields remediation expensing allows for the expenses incurred in the cleanup of a brownfield site to be immediately expensed by a developer. Oftentimes, brownfields redevelopment projects are undertaken by non-profit organizations and limited liability corporations that exist for a single project or property. Because remedial costs are typically incurred early in the project, these businesses have difficulty taking advantage of the tax incentive because they do not generate taxable income in the year the expense is incurred.

To increase the usefulness of this incentive, a “carry forward” provision should be included to allow the expensing deduction to be used in future years, when taxable income from many of these redevelopments is earned, which can be applied toward the deduction.

- There are an estimated 450,000 to 1 million brownfields sites in the United States that need to be redeveloped.
- A report by the Northeast-Midwest Institute concluded that, on average, \$1 of public investments in brownfields leverages \$8 in total investment.
- The brownfields remediation expensing tax provision is currently reauthorized on a yearly basis and needs to be made permanent.
- A “carry forward” provision should be included to allow the expensing deduction to be used in future years, when taxable income from many of these redevelopments is earned, which can be applied toward the deduction.

Members of NAIOP Tulsa and NAIOP Senior Director of Federal Affairs John Bryant meet with Senator James Inhofe (R-Okla.).



Credit Availability and Capital Markets

For most of the past two years, credit markets remained frozen following the collapse of the financial industry. The availability of credit to refinance existing debt on performing commercial real estate loans became severely constrained. Banks tightened their lending standards and were intent on reducing exposure to losses from their commercial real estate holdings. In addition, the secondary market of commercial mortgage-backed securities (CMBS), which had been the source for much of the financing for commercial real estate projects, was virtually nonexistent. Combined, banks and the CMBS market had accounted for approximately 75 percent of all outstanding commercial real estate loans before the downturn in late 2008.

While credit conditions are improving slowly, hundreds of billions of dollars in commercial real estate debt will come due over the next few years. During 2011, NAIOP will work with Congress and the administration to ensure that sufficient capacity exists in capital markets to provide credit to the commercial real estate industry.

Internet Sales Tax (E-fairness)

NAIOP supports e-fairness that allows for the collection of the sales and use taxes that are already owed to state and local governments under existing tax laws. States and localities are losing billions each year in uncollected sales tax. Currently, consumers are legally required to pay a corresponding sales tax on online purchases when a seller does not collect them. However, many consumers do not understand their sales tax responsibility, and compliance with remote sales tax requirements is very low.

- Internet Sales Tax is not a new tax, but allows for the collection of existing state and local taxes that are already owed.
- The U.S. Census Bureau estimates that 33 percent of state revenues come from sales tax.
- States and localities are facing severe budget shortfalls which could lead to tax increases, often on commercial real estate property.

NAIOP-PAC and our dedicated Government Affairs staff have effectively organized NAIOP's representation on Capitol Hill, making it a powerful voice for commercial real estate.



NAIOP Utah members meet with Representative Jim Matheson (D-Utah).

Energy, Transportation and Infrastructure

Energy

Becoming more energy-efficient is an important consideration in today's commercial real estate industry. NAIOP believes that the federal government should offer more incentives to help developers reach advanced levels of energy efficiency to offset some of the initial costs incurred by the developer. NAIOP opposes federal mandates that do not take into account the economic models of a successful development project.

Legislative proposals to increase energy efficiency through a national mandated energy code will require significant upfront costs for developers. In the real estate industry, local economic conditions determine the levels of efficiencies and costs that can be absorbed in a given market. Not all markets are created equal, and nationwide energy mandates for all building types will create a disincentive to develop new properties in areas where the markets cannot absorb the increased costs. Time is needed to bring all markets to a level of sophistication where more sustainable technologies become the norm and are available within a reasonable cost.

- NAIOP opposes recent attempts by the federal government to mandate arbitrary energy efficiency requirements for buildings.
- There are limits within the confines of a building code as to what can be done to increase energy efficiency. Energy codes generally only regulate the building's envelope (roof, wall and floor insulation), mechanical and lighting systems. Much of a building's energy use falls outside the purview of codes and will not be affected by an increase in code efficiency.
- Approximately 25 percent of a commercial building's energy use is attributed to tenant "plug loads" (computers, office equipment, etc.), which are not regulated through building codes.
- Congress should offer more incentive based solutions to help the real estate community reach higher levels of energy efficiency.

Transportation/Infrastructure Investment

NAIOP believes that increasing federal transportation and infrastructure funding is paramount to a thriving real estate industry and national economy. The success of commercial real estate projects depends largely on infrastructure investments and viable connectivity strategies that incorporate different modes of transportation, including highways, roads, rail and mass transit.

A new national strategy is needed to address future transportation needs that incorporate innovative funding solutions that move towards enhancing rather than just maintaining our nation's infrastructure. NAIOP supports a timely reauthorization of a multi-year transportation bill with significantly increased funding.

- Public-private partnerships should be expanded and new revenue sources established to solve congestion-related problems.
- Increased annual federal funding for port expansion is needed to relieve congestion problems associated with receiving and distributing imported goods.
- A national goods movement strategy is necessary to develop warehouses and other facilities effectively along trade corridors to meet future growth demands.
- Failure to invest in freight transportation will lead to an increase in congestion on roads and slow the movement of goods resulting in higher cost to consumers.
- Congress should support a national infrastructure bank and promote tax incentives that encourage private investments for infrastructure improvements.

Environmental and Land Use Issues

Endangered Species Act Reform (ESA)

NAIOP supports the goals of protecting our nation's treasured species that are in danger of extinction. However, the Endangered Species Act (ESA) is in need of reform. Currently, there is a lack of reliable data analysis in the decision making process for endangered species protection. There is a critical need to establish greater scientific standards that are peer reviewed for all ESA listing and de-listing proposals to ensure the use of sound science and to provide a mechanism for resolving scientific disputes. Additionally, the Secretary of the Interior should be required to solicit and obtain additional data from landowners and others that would assist in the development of recovery plans, including the recovery goals. The process should compensate property owners when they are substantially deprived of the economically viable use of their property because of ESA restrictions. Landowner incentives and cooperative agreements are the best way to recover endangered species. These agreements and incentives would be best implemented through individual state programs allowing for local participation and expertise.

- Comprehensive ESA reform should include opportunities for local governments and affected parties to have a greater input in the entire process.
- Incentives and liability relief must be established for landowners that participate in voluntary conservation efforts.
- Endangered species listing should be focused on the use of sound scientific data that has been field-tested or peer reviewed.
- Stronger efforts must be made to recover endangered species and have them de-listed.

Wetlands

Wetlands are an important part of the environment and ecosystem, and their declining acreage is a legitimate national concern. NAIOP would like to see a balanced approach to the federal wetlands permitting program (Section 404) that simplifies and promotes efficiency in the permitting process while protecting sensitive environmental areas. NAIOP strongly opposes attempts by the federal government to change the term "navigable waters" to "waters of the United States" in the Clean Water Act in order to increase federal jurisdiction and permitting authority. This would limit the inherent right of states to protect and regulate state waters imposing additional regulations which often do little to protect waterways.

- NAIOP supports a balanced approach to the federal wetlands permitting program that provides simplification and certainty to landowners without undue regulation.
- NAIOP opposes legislation that subjects all waters, including man-made ditches, to the legislative powers of Congress and urges increased flexibility and expedition of routine permitting for projects with negligible effects.
- Changing the legislative definition of wetlands would give the federal government jurisdiction over all intrastate waters (essentially all wet areas within a state) including manmade ditches.



Eugene F. Reilly
*2011 Vice Chair,
 Government Affairs*

Eugene F. Reilly is President, The Americas for AMB Property Corporation. In this capacity, he is responsible for AMB's business in the United States, Canada and Latin America. Reilly joined AMB in 2003 and has 26 years of experience in the development, acquisition, disposition, financing and leasing of industrial properties throughout the Americas.

He serves on NAIOP's Corporate Board of Directors and the Executive Committee and previously served on the Board of Directors of NAIOP Massachusetts and the National Industrial Education Committee.

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