



July 14, 2011

The Honorable Jeff Bingaman  
Chairman, Committee on Energy and Natural Resources  
United States Senate  
703 Hart Senate Office Building  
Washington, DC 20510

The Honorable Lisa Murkowski  
Ranking Member, Committee on Energy and Natural Resources  
United States Senate  
709 Hart Senate Office Building  
Washington, DC 20510

Re: The Energy Savings and Industrial Competitiveness Act of 2011, S.1000

Dear Chairman Bingaman and Ranking Member Murkowski:

On behalf of NAIOP, the Commercial Real Estate Development Association, I want to thank you and the members of the committee for considering S. 1000, "The Energy Savings and Industrial Competitiveness Act of 2011," introduced by Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH). NAIOP is the leading organization for developers, owners, investors and related professionals in office, industrial, retail and mixed-use real estate, and comprises 15,000 members and 55 local chapters throughout North America.

We have been given the opportunity to work with staff during the initial drafting of this bill, and we sincerely appreciate the open and transparent way that this legislation was created. We commend Senators Shaheen and Portman for facilitating the numerous discussions that took place with a variety of stakeholders during the past several months.

We remain concerned with the general approach of this legislation, specifically section 101, that gives new authority to the Department of Energy (DOE) to create new standards and targets for energy efficiency building codes. We feel that the current consensus driven building code process is far superior to relying on the federal government to determine what is and what is not feasible for new construction regarding energy efficiency improvements.

This legislation also does not take into consideration the significant efficiencies already gained in new construction during the past few years. Since 2002, commercial building energy codes have already achieved gains approaching 50 percent. These substantial gains have been achieved in just the last three code cycles: 2004, 2007 and 2010. All of this was accomplished without implementing new federal guidelines or creating targets for new energy codes.



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We believe that many of the changes contained in the substitute amendment are improvements to previous proposals and support the following provisions:

1. Economic considerations
2. Undertaking a rulemaking to determine targets
3. Separating commercial and residential targets
4. Removing zero-net-energy from the goals and target sections
5. Retrofit loan guarantees
6. Small Business Regulatory Enforcement Fairness Act (SBREFA) analysis
7. Removing retrofits from the compliance section
8. Consideration of plug load and other strategies to develop and adjust targets

1. *Economic considerations.* NAIOP supports the inclusion of this section that requires DOE to consider the economic feasibility of achieving new targets for building codes. This includes the costs and savings for consumers and building owners and a return on investment analysis. Currently, DOE only has the obligation of determining if a new code is more efficient than a previous code. We feel strongly that economic considerations need to be studied before efficiency targets are established.
2. *Rulemaking to determine targets.* While we contend that DOE should not subvert the current consensus driven code process, we do feel that a formal rulemaking allowing for comment by interested and affected parties is far superior to enshrining specific code targets in legislation. Previous proposals that have been considered by this committee have set targets and dates without first determining the feasibility of those targets or seeking input before establishing new codes. We feel that undertaking a formal rulemaking is a better alternative.
3. *Separating commercial and residential targets.* NAIOP supports separating the targets for commercial and residential buildings for increasing energy efficiency. The differences between these two types of buildings is significant and while it may be practical to achieve certain efficiencies for residential buildings, those same efficiency improvements often do not apply to the construction of commercial buildings. Similarly, there are specific things that can be accomplished with commercial buildings that can not be achieved with homes.
4. *Removing zero-net-energy (ZNE) from goals and targets.* As we have previously commented in a letter, submitted for the June 9 hearing on S.1000, we feel strongly that ZNE should not be an overriding goal for setting building efficiencies. Because this standard is not attainable in the foreseeable future, especially without defining the role of on-site power generation, we do not believe that it should be considered as the basis for setting code targets and efficiency gains in new buildings.
5. *Including retrofit loan guarantees.* New buildings account for a very small percentage of overall building stock. This is especially true in today's environment. Commercial buildings that are built by today's standards are vastly more energy efficient than the majority of existing buildings across the country. This provision authorizes the DOE to create a loan guarantee program specifically for existing building retrofits. NAIOP supports creating incentives for existing buildings where the majority of energy is consumed and the most energy efficiency gains can be achieved.



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6. *Small Business Regulatory Enforcement Fairness Act (SBREFA) analysis.* NAIOP supports including language that creates a SBREFA panel to ensure that the interests of small business are represented during the rulemaking process. This will offer another opportunity for affected businesses to share their experiences with code efficiencies and offer a real life analysis on how the proposed targets will affect the development community.
7. *Removing retrofits from the compliance section.* Initial drafts of this bill included language that included retrofits in the compliance section. While major renovations are often already required to comply with current code regulations, depending on a state's building code, we were concerned that this legislation would create a new definition of retrofits. This could have the unintended consequence of inhibiting building owners from making improvements to their properties for fear of triggering new regulations. We are grateful that a new retrofit standard was omitted from this legislation.
8. *Consideration of plug loads and other strategies.* Plug loads account for a significant amount of the energy used and attributed to buildings. While the amount varies depending on building type, it is generally considered to account for up to 30 percent of a buildings total energy usage. Plug loads typically are not controllable by a developer and fall outside the scope of building codes. Much of this is driven by tenant behavior and occurs well after a building receives a certificate of occupancy. We have long maintained that this must be considered before code targets are developed. We support this provision that recognizes that not all efficiencies can be achieved during the development process and that other strategies are needed to maximize the amount of energy efficiency.

In conclusion, we appreciate your attempts to advance energy legislation that leads to improved energy efficiency in buildings. While we applaud the intent of S. 1000, and are supportive of the above mentioned provisions, we remain concerned and object to giving DOE new authority to control the code writing process. We look forward to working with your offices on this and other issues that affect the commercial real estate industry.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Bisacchino".

Thomas J. Bisacchino  
President and CEO  
NAIOP

cc: Senate Energy and Natural Resources Committee