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NAIOP 2009 END OF SESSION REPORT

The 2009 legislative session will go down in history as one of the most grueling for commercial real estate developers. The industry was faced with an onslaught of detrimental legislation targeting residential and mixed used developers. Anti-growth advocates sponsored legislation to place such restrictive measures on Urban Renewal Authorities (URA) that virtually all future URAs along the Front Range would have been eliminated. Bills allowing for additional impact fees, granting the state a role in land use planning, and rent control all were introduced. The most infamous of Colorado's Construction Defects' trial lawyers, Scott Sullen, made an effort to open the Construction Defects Act. Mandates for developers to pre-wire for alternative energy sources and install carbon monoxide detectors were passed. The Axiom team was successful in defeating numerous threats to the industry; however this may be the "calm before the storm" as efforts are being developed to attack URAs and create land use planning processes designed to slow growth and development.

CRITICAL LEGISLATION

HB09-1070 LANDS PROHIBITED FROM URAS (*Fischer*) This bill made several modifications to the procedures surrounding the actions of urban renewal authorities. The bill specified that no area that has been designated as an urban renewal area (URA) shall contain any agricultural or vacant land unless:

- the area is a Brownfield site as designated by the United States Environmental Protection Agency;
- each public body that levies ad valorem property taxes on the area agrees to the inclusion of the area within the URA;
- the area was included in an approved urban renewal plan prior to the bill's effective date; or
- the area was previously developed and became vacant as a result of demolition, destruction, or acts of nature.

As part of a dispute resolution process, current law authorizes counties to challenge impacts relating to an urban renewal project. The bill gave such authority to any taxing entity levying ad valorem property taxes on any portion of the real property

constituting a URA. The bill also expanded the grounds by which affected taxing entities may object to actions of a municipality that has created the urban renewal plan.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1091 CARBON MONOXIDE ALARMS IN RESIDENTIAL PROPERTIES

(Soper —Romer). In the 2008 legislative session NAIOP opposed similar legislation based on concern over the technology that was specified in the bill and building code issues. In 2009, NAIOP agreed to drop their opposition the bill when language was added that insured immunity from liability when the alarm has been properly installed and maintained. It is anticipated that the 2010 version of the International Building Code (IBC) will include carbon monoxide alarms in a similar fashion to fire alarms. HB 09-1091 requires that all single and multi-family dwellings sold after July 1, 2009, be equipped with carbon monoxide alarms near bedrooms if the dwelling has:

- a fuel burning heater or appliance;
- a fireplace; and/or
- an attached garage.

Further, the bill requires that any building permit issued for new construction of a single or multi-family dwelling, including rental properties, be subject to the same provisions. The bill establishes requirements for the maintenance and installation of alarms in rental properties and requires that prior to renting to a new tenant a landlord must replace or repair an existing alarm, as needed. A multi-family rental building may be installed with an alarm near the central heating unit in the building if the alarm is able to notify a responsible person. The bill permits a local government to set more stringent requirements for the installation of alarms. Finally, the bill grants immunity from liability to any person who properly installs or maintains a carbon monoxide alarm.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Amend and Monitor

Outcome: Successfully Amended and Signed by the Governor

HB09-1106 CODIFY PENDING ORDINANCE DOCTRINE *(Hullinghorst—Gibbs)*

Specified that an application for a development permit (application) or other request for a land use approval (request) by a county or municipality (local government) shall be subject to any pending law, rule, resolution, ordinance, or other regulation of the local government (pending regulation) at the time the application or request is submitted, provided that:

- The pending regulation is adopted on or before the date a decision on the application or request is rendered by the local government; and
- The local government has not unreasonably or arbitrarily delayed or declined to make a decision on the application or request.

Authorized a local government to adopt a new or amended regulation when necessary for the immediate preservation of the public health and safety and to enforce a pending regulation in relation to an application or request that is pending at the time of the adoption of the regulation.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1107 HOA LIMITS ON ENERGY EFFICIENCY MEASURES (*Kerr A.—Gibbs*) HB09-1107 prohibits regulations of unit owner associations (HOAs), covenants, or deed restrictions that increase the cost of renewable energy generation devices (such as solar panels) by more than 10 percent or \$500, whichever is less, or reduce their efficiency by more than 10 percent. In addition, HOAs will be prohibited from denying the installation of energy efficiency measures (such as awnings, evaporative coolers, or outdoor solar lights) by increasing their cost by more than 10 percent or \$200, whichever is less, or reducing their efficiency by more than 10 percent.

Action on applications for the installation of renewable energy generation devices and energy efficiency measures will be required within sixty days, regardless of whether the HOA has a generally applicable standard, guideline, or policy in place when the application is made.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & SUSTAINABILITY SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1138 PROPERTY INTEREST AND LIMIT ON RENT CONTROL (*Curry—Schwartz*) Under the current statute addressing the control of rents (rent control statute) by counties and municipalities (local governments), local governments are prohibited from enacting any ordinance or resolution that would control rent on a private residential housing unit. This bill attempted to clarify that nothing in the statute is intended or shall be construed to prohibit or restrict the right of any property owner and any state agency, county, municipality, or housing authority to enter into and enforce a contract that controls rent on a private residential housing unit, whether the contract is entered into before, on, or after a specified date. However the bill contained language that conflicted with the rent control prohibition. The proposed bill had the effect of controlling the rent on a private residential housing unit and was opposed by the real estate community.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1149 SOLAR HOME PREWIRE AND CONSULTATION (*Merrifield—Carroll M.*) The bill requires homebuilders of each home for which a buyer is under contract to offer prospective buyers the opportunity to have the residence's electrical or plumbing system include one of the following:

- a residential photovoltaic solar generation system or a residential solar thermal system;
- upgrades of wiring or plumbing, or both, planned by the builder to accommodate future installation of such systems;
- a chase or conduit constructed to allow ease of future installation of the necessary wiring or plumbing for such systems.

This offer must be made in accordance with the builder's construction schedule for the residence. In addition, such homebuilders are required to provide every buyer

under contract with a list of solar installers who can assess the home's solar energy generation potential.

The bill requires the Governor's Energy Office (GEO) to maintain a publicly available, master list of Colorado solar installers. The GEO is allowed to establish qualifications of businesses to be included on this list. Finally, the GEO or its designees are directed to offer periodic training sessions on residential photovoltaic solar generation systems or solar thermal system to homebuilders. GEO will cover the cost of these training sessions through a registration fee.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Support CAHB Amendments

Outcome: Successfully Amended and Sent to the Governor

HB09-1170 UNEMPLOYMENT INSURANCE EMPLOYEE LOCKOUT (*Casso—Tochtrop*) The bill allows an employee who is subject to an employer-initiated lockout to receive unemployment benefits under certain circumstances. This bill was introduced at the request of the UFCW Union in anticipation of upcoming contract negotiations with larger grocers.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Passed

HB09-1193 NEGLIGENCE IN MOTOR CARRIER AGREEMENTS (*McFadyen—Tochtrop*) HB09-1193 would prevent a party to a motor carrier transportation agreement from transferring financial responsibility for its own negligence to another party. A provision in a motor carrier transportation agreement that holds a person or the person's surety or insurer responsible for the negligence of another party would be void as against public policy and unenforceable. Further, the bill stated that a motor carrier transportation agreement can hold a negligent party responsible for indemnifying other parties, but only to the extent of the indemnifying party's negligence. The bill also excluded agreements relating to intermodal transportation equipment or injuries or death suffered by a railroad employee. The bill clarified that the following are not affected:

- the doctrine of respondent superior liability;
- liability for the negligence of an at-fault party; and
- Workers' compensation laws or immunities.

The bill would have taken effect on July 1, 2009, and would apply to motor carrier transportation agreements entered into or renewed on or after that date.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1201 LAND USE PLANNING MILITARY INSTALLATIONS (*Labuda—Spence*) HB09-1201 required local governments to address adverse effects of development in close proximity to military installations through land use planning. Concerns were identified with vested property rights in Front Range counties that had high concentrations of platted and proposed residential and multi-family housing. HB 09-1201 required land use planning to occur in the following manner:

- by December 31, 2010, each county or municipality that has territorial boundaries within two miles of a military airport or military installation that includes property in a high noise or accident potential zone must amend its master plan to ensure that future development is compatible with the high noise or accident potential of the military installation as it relates to public health and safety;
- by December 31, 2011, local governments must adopt or amend and enforce its zoning and other land development regulations to ensure that future property development is compatible with the high noise and accident potential of the military facilities; and
- by December 31, 2011, affected local governments must incorporate sound attenuation standards into any building code that governs the development or use of affected property.

Local governments must notify property owners in a high noise or accident potential zone of any additions or changes to its master plan, zoning regulations or other land development regulations that are applicable to property in the zone. Notice of the changes must be made by publication in local newspapers at least 30 days prior to final approval. Finally, primary responsibility for recommendations and technical assistance relating to the designation of matters of state interest with regard to military installations will include the Department of Military and Veterans Affairs. This bill was opposed by the Colorado Municipal League as usurping local land use authority.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1208 PUBLIC WORKS PREVAILING WAGES & BENEFITS (*Soper*) This bill required that contractors and subcontractors on state public works contracts worth more than \$100,000 pay prevailing wages and fringe benefits to their workers. Prevailing wages and fringe benefits are defined as the same as those set forth in the federal Davis-Bacon Act.

Contractors and subcontractors must furnish payroll records to the director of the Division of Labor in the Department of Labor and Employment and post the prevailing wages and fringe benefits on the department's website. The director may investigate employers and has jurisdiction in remedying violations. The director must also publish a list of contractors and subcontractors who willfully fail to pay prevailing wages and fringe benefits and debar a contractor or subcontractor for multiple willful failures to pay prevailing wages and fringe benefits. The bill establishes procedures for filing complaints with the Division of Labor or the courts.

Contractors must submit a statement of unpaid prevailing wages and fringe benefits prior to receiving final payment from a state agency. State agencies must withhold any unpaid prevailing wages and fringe benefits and pay them directly to workers.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1210 MANDATORY PAID SICK LEAVE (*McGihon--Carroll M.*) Created the "Healthy Families and Workplaces Act" (act), which required all private employers in Colorado to provide paid sick leave to their employees, accrued at the following rates:

- For employers employing more than 15 employees, one hour of sick leave for every 30 hours worked, up to a total of 72 hours of paid sick leave in a 12-month period; and
- For employers employing between 6-15 employees, one hour of sick leave for every 60 hours worked, up to a total of 40 hours of paid sick leave in a 12-month period.

Allowed an employee to carry forward and use in subsequent calendar years paid sick leave that is not used in the year in which it is accrued. Allowed employees to use up to a specified number of hours of paid sick leave in a 12-month period to be absent from work for the following purposes:

- The employee has a mental or physical illness, injury, or health condition, needs a medical diagnosis, care, or treatment related to such illness, injury, or condition, or needs to obtain preventive medical care;
- The employee needs to care for a family member who has a mental or physical illness, injury, or health condition, needs a medical diagnosis, care, or treatment related to such illness, injury, or condition, or needs to obtain preventive medical care; or
- The employee or family member has been the victim of domestic abuse, sexual assault, or stalking and needs to be absent from work for purposes related to such crime.

Prohibited an employer from retaliating against an employee who uses his or her paid sick leave or otherwise exercises his or her rights under the act. Required employers to notify employees of their rights under the act by providing employees with a written notice of their rights and displaying a poster, developed by the Division of Labor (division) in the Department of Labor and Employment, detailing employees' rights under the act.

Obligated employers to retain records documenting, by employee, hours worked, paid sick leave accrued, and paid sick leave used and to make such records available to the division to monitor compliance with the act.

Authorized the director of the division to implement and enforce the act and adopt rules necessary for such purposes. Treated an employee's information about his, her, or a family member's health condition or domestic abuse, sexual assault, or stalking case as confidential, and prohibited an employer from disclosing such information or requiring the employee to disclose such information as a condition of using paid sick leave.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Opposed

Outcome: Postponed Indefinitely

HB09-1227 NEIGHBORHOOD EQUITY SKIMMING & NUISANCES (*Frangas—Hudak*) The bill originally included language intended to add to landlord's rights to evict tenants based upon activities that were detrimental to the neighborhood. This language was deleted due to concerns about how interaction between citizens, tenants, landlords and law enforcement would occur. The act now expands the definition of equity skimming to include the collection of rent on a foreclosed property by any person other

than the property owner. The bill is effective 90 days following final adjournment of the General Assembly unless a referendum petition is filed, and applies to acts committed on or after this date.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor; Neighborhood nuisance removed from bill

Outcome: Signed by the Governor

HB09-1235 NEIGHBOR CLEANUP GOOD SAMARITAN LAW (*Acree—Mitchell*)

The bill allowed a person with a secured interest in an unoccupied property to take steps to protect the property from vandalism and trespassing, without being deemed in possession of the property. Local governments may accept the aid of volunteers in removing rubbish, weeds or other nuisances from unoccupied properties. Such volunteers would be provided immunity from any civil action resulting from unpaid services performed on a property. The person holding title to, or in possession of, an unoccupied foreclosed property would be immune from liability from any civil action brought by a volunteer due to dangerous conditions on the property or negligent conduct of any person. While the intent of this legislation was admirable, language added by the Colorado Trial Lawyers Association created concern that lien holders would be liable for actions of any volunteer.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Oppose as amended in Committee.

Outcome: Postponed Indefinitely

HB09-1247 HOMEBUYERS' ENERGY RIGHT-TO-KNOW ACT (*Apuan—Morse*)

Effective January 1, 2010, the bill required the seller of an existing residence to provide the buyer with both energy billing and usage history for the property for the 12-month period immediately preceding the listing of the property. The information must have been provided to the buyer within five days after entering into a contract of purchase and sale. The requirement applied to residential land and residential improvements, including mobile homes and manufactured homes that are permanently affixed to a foundation. Hotels and motels would be excluded from the bill.

Compliance with the disclosure requirements of the bill relieved the seller and the seller's real estate agent from liability for any damages resulting from an alleged inadequacy of the property's insulation or excessive energy consumption.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1254 DECEPTIVE TRADE PRACTICES 1031 EXCHANGES (*Judd—*

Harvey) The bill adds a new series of deceptive trade practices to the Colorado Consumer Protection Act for misconduct committed by exchange facilitators who mediate like-kind exchanges under 26 U.S.C. SEC. 1031. An exchange facilitator is effectively required to serve as a responsible custodian by maintaining adequate security for funds and properly accounting for funds. The bill also prohibits various misconduct such as fraud, misrepresentation, and commingling of funds.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1255 LIMIT O&G PERMIT WILDLIFE MITIGATION (*Gardner C.—Kopp*)

Specified that an oil and gas operator is not required to consult with the Division of Wildlife in the Department of Natural Resources (division) to determine whether wildlife mitigation requirements are reasonably practicable, and required the Colorado oil and gas conservation commission (commission) to make that determination. Included technical and economic feasibility under the term "reasonably practicable". Prohibited the commission from proposing restricted surface occupancy for oil and gas operations upon private lands without the consent of the surface owner. Prohibited the commission from denying an application because the surface owner did not consent to a wildlife mitigation requirement. Required that wildlife habitat mitigation best management practices (BMP) are presumptive conditions for operations in the units for which they are established, and prohibited the commission from requiring a BMP that has not been so established unless the commission demonstrates the need for the BMP.

Required the commission to conduct a cost-benefit analysis of a mitigation measure proposed by the division in an appeal of a permit, rule, or order, and prohibited the commission from upholding such measure unless the commission demonstrates that the benefits of the measure outweigh its costs. Prohibited the executive director of the Department of Natural Resources from participating in an appeal of a mitigation measure proposed by the division, and prohibited the executive director of the Department of Public Health and Environment (department) from participating in an appeal of a mitigation measure proposed by the department. Required the commission to grant or deny a variance from a wildlife mitigation measure within 5 days after receipt of a written request for the variance.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1258 LIMIT MUNICIPALITY EXTRATERRITORIAL CONDEMNATION

(*Gardner B.—Mitchell*) Regulated the exercise of eminent domain by a home rule municipality in connection with the acquisition by condemnation of property located outside the municipality's territorial boundaries to require that such condemnation be permitted only upon satisfaction of each of the conditions listed. This legislation was introduced by the sponsor in response to the "Telluride" court decision, a prominent court case impacting government land use authority.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1259 IMPACT FEES FOR AUTHORITY LOCAL PURPOSES (*Hullingerst*)

Modified existing statutory provisions authorizing a county, municipality, and city and county (local government) to impose an impact fee or other similar development charge (fee or charge) to finance capital facilities to address the impacts from new development.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & TAX SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1284 CORRIDOR CAPACITY STRATEGIC PLANNING (*Levy—Williams*)

The bill established a system for the Colorado Department of Transportation (CDOT) to take on a role in land use planning typically reserved for local governments. CDOT currently works with local governments and metropolitan planning organizations (MPOs) to address the impact of future development on traffic congestion in certain corridors.

Specifically, it required that the CDOT and MPOs jointly identify and prioritize congested corridors as part of the statewide transportation planning process. For certain new development plans within those corridors, the CDOT could require additional studies in addition to traffic studies, current submitted, review applications, and submit comments to local governments. The CDOT was mandated to define in rule the criteria that would trigger its involvement, in any development or rezoning application that met certain criteria must be transmitted to the CDOT. NAIOP was concerned over the potential of duplicative processes, time delays and the potential for the state requiring the build out of infrastructure unrelated to specific applications for development. NAIOP joined with the International Council of Shopping Centers (ICSC) in attempting to work with the sponsors; however, amendments were rejected. The bill was defeated on the floor of the Senate.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Defeated on Senate Floor

HB09-1302 PREFERENCE FOR COLORADO STEEL (*Pace—Tapia*) Required state agencies that purchase steel products to give a preference to such products produced in the state by resident bidders if certain conditions are met. Specified that, to be considered a steel product produced in the state, the product must be manufactured or fabricated in the state. Required resident bidders seeking to qualify for the preference to certify to the state agency inviting the bid that the resident bidder's steel product was produced in the state.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB09-1310 EMPLOYEE MISCLASSIFICATION (*Levy—Heath*) The bill allows any person to file a written complaint with the Division of Employment and Training in the Department of Labor and Employment alleging an employer is misclassifying an employee as an independent contractor. The division director may investigate complaints and shall focus on the most egregious complaints or those acts undertaken to gain a competitive advantage or to avoid the payment of taxes. Upon finding a violation, the director shall order the employer to pay back taxes owed plus interest. For cases where the misclassification was made with willful disregard of the law, the director is authorized to impose a fine, and upon a second or subsequent violation, prohibit an employer from contracting with the state for up to 2 years.

The bill allows an employer to request, for a fee, a nonbinding advisory opinion from the director as to how an individual employee should be classified. The department

is required to conduct a statewide study on the issue of employee misclassification and report those findings in combination with information on complaint investigations, to the General Assembly within two years.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1327 URL MODIFY IMPACTS TAXING ENTITIES (*Hullinghorst—Tochtrop*) This bill was introduced by Colorado Counties Inc., (CCI) at the behest of Boulder County, triggering a nasty battle between municipal and county government officials. As amended by the House Local Government Committee, the bill modified the method of distributing property tax revenue attributable to urban renewal authorities (URAs) that arise from the use of tax increment financing (TIF) mechanisms to support urban renewal projects. The URA and any taxing entity located within the URA could have entered into an intergovernmental agreement for determining the future allocation of property taxes. However, in the absence of an intergovernmental agreement, HB09-1327 required that 50 percent of the incremental property taxes collected be distributed to the special fund established to pay bonds and loans associated with the authority, beginning five years from the date of the adoption of an urban renewal plan. The remaining 50 percent of incremental property taxes collected were to be allocated to all of the taxing entities in the URA on a pro rata basis in proportion to the property taxes levied.

No later than August 1 of each year, the bill required the governing bodies affected by the URA to certify an itemized list of the property tax distribution percentages from the mill levies to be certified to the county assessor. Further, the bill repealed existing statutory provisions creating an arbitration process for adjudicating objections by a county to an urban renewal plan with county impacts. The bill also made several changes to the approval and modification process with regard to an urban renewal plan. Specifically, the bill:

- exempted a city and county from existing statutory requirements to provide an urban renewal impact report;
- expanded the list of entities to which an urban renewal plan or modification must be submitted;
- changed the deadline for submission of a plan or modification to be at least 90 days prior to the initial hearing, rather than the current law requirement of at least 30 days prior to the initial hearing; and
- modified other data requirements that must have been provided prior to approval of an urban renewal plan.

The bill was defeated in the Senate Local Government Committee. However, strong statements were made by the Senator Gail Schwartz, chair of the committee, and newly elected Senator Linda Newell on their plans to require the Colorado Municipal League (CML) and CCI to work out an agreement on the sharing of TIF revenues prior to the next legislative session.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

HB 09-1366 CONCERNING ELIMINATION OF THE STATE INCOME TAX MODIFICATION FOR QUALIFYING COLORADO CAPITAL GAINS.

(Pommer—Romer) Effective tax year 2010, the reengrossed bill eliminates the income tax subtraction for Colorado-source capital gains for qualifying capital assets purchased after the effective date of the bill. Taxpayers who purchase qualifying capital assets between May 9, 1994, and the effective date of the bill can still claim a capital gains subtraction on qualifying assets with an aggregate actual (market) value at the time the asset is sold of up to \$500,000.

The bill also eliminates two TABOR refund mechanisms that expand the Colorado-source capital gains subtraction. These mechanisms are only available during years in which there is a TABOR surplus large enough to trigger the use of each refund mechanism. One refund mechanism eliminates the May 9, 1994, purchase date but retains the 5-year holding requirement. Thus, capital gains from the sale of qualifying assets can be deducted no matter when the purchase was made. The second reduces the 5-year holding period to assets held for at least one year.

NAIOP Committee: **TAX SUBCOMMITTEE**

Position: Oppose

Outcome: Passed

SB09-004 MORATORIUM OIL & GAS COMMISSION NEW RULES *(Brophy—Bradford)* Specified that rules of the Colorado oil and gas conservation commission concerning permit review, public health and safety, and wildlife shall not take effect prior to July 1, 2010.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-095 CONSTRUCTION CONTRACT PROMPT PAY *(Tapia—Riesberg)*

This legislation has been introduced for the past five sessions and has yet to pass, primarily due to concerns raised by business organizations who successfully argued the bill violated “right to contract” principles. The bill would have set payment standards to govern construction agreements between contractors and private property owners or public entities. Among other things, the bill required that invoices be paid within 30 days or within 25 days if a subcontractor is involved. It also required that a contractor forward progress payments to any subcontractor within 5 days or within the 30-day billing cycle, whichever is sooner. Owners, contractors, and subcontractors would have to pay at least 12% interest per year on unpaid invoices.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: NAIOP participated in the Work Group established to develop a compromise on this issue.

Outcome: Postponed Indefinitely

SB09-233 MIXED-USE PROPERTIES & PROPERTY TAX *(Schwartz—Liston)*

Effective beginning with property tax year 2010, this bill allows a mixed-use residential property in which less than 25 percent of its square footage is used for nonresidential purposes to be assessed entirely at the residential assessment rate. Properties in which the portion used for nonresidential purposes exceeds 2,000 square feet are not eligible. The

residential assessment rate is currently 7.96 percent. Under current law, only the portion of the property used for residential purposes is assessed at the residential assessment rate. The portion of the property used for other purposes is assessed at the nonresidential rate, which is usually 29 percent. The assessment rate determines the taxable value of the property.

NAIOP Committee: **TAX SUBCOMMITTEE**

Position: Support

Outcome: Postponed Indefinitely

SB09-246 CONSTRUCTION DEFECTS REVISTED 2009 (*Morse—Pommer*)

NAIOP took the lead in opposing SB 09-246 and established organized opposition including the mayors of Aurora and Lakewood, the Economic Development Council, chambers of commerce, and real estate groups. This bill modified the "Construction Defect Action Reform Act" to require that moratory interest be awarded in residential construction defect cases from the time the construction defect is created (though may not yet be apparent or latent) through the end of the statutory notice of claim process. The bill set an interest rate for awards and specifies certain situations in which moratory interest shall not be awarded.

NAIOP Committee: **CONSTRUCTION DEFECTS TASK FORCE**

Position: Oppose

Outcome: Postponed Indefinitely

SB09-281 PINNACOL ASSURANCE (*Shaffer B.—Weissmann*) This bill originally repealed the authority of the Pinnacol Assurance (Pinnacol) chief executive officer to act as the head of a private insurance company. The "Worker Safety and Injury Compensation Study Group" was created as a 10-member interim committee to study, make recommendations and report its findings on the operations of Pinnacol, workers' compensation premiums, worker safety, and compensation for injured workers. NAIOP, along with numerous business organizations, opposed the potential to dismantle the Colorado Workers Compensation System. The committee is to consider the feasibility of the continued operation or sale of Pinnacol. The State Auditor is directed to conduct a performance audit of Pinnacol in 2009, and has continuing authority to conduct subsequent audits. The bill was amended in conference committee to strike the review of the system, and provided for the addition of public, policy holder and injured worker members to the interim committee.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose, Successfully Amended

Outcome: Passed

OTHER LEGISLATION OF INTEREST

HB09-1001 INCOME TAX CREDIT FOR CO JOB GROWTH (*Rice—Heath*) HB 09-1001 provides an income tax credit to firms that create jobs in Colorado. If the jobs are created within an enhanced rural enterprise zone, firms must create at least 5 jobs and retain them for one year. If the jobs are not being created within an enhanced rural enterprise zone, at least 20 jobs must be created and retained for one year. In order to

qualify for the credit, the jobs must bring wages of at least 110 percent of the average wage of the county in which the new jobs are located.

The tax credit, effective for tax years 2009 through 2018, is equal to one-half of the amount the employer is required to pay in federal social security and Medicare taxes on the created jobs. In most cases, this is equal to 3.825 percent of each job's annual wage. For each job created, firms receive the credit each year the job is retained for up to five years, but no later than tax year 2018. Each year's credit may be carried forward for ten years, or through tax year 2024, and is nonrefundable. The bill allows the credit to be given for jobs in any industry.

Firms are required to file an initial application to the Colorado Economic Development Commission (commission) outlining the number of jobs they expect to create over a period of up to five years and must provide documentation indicating that, if not for the credit, the jobs would have been created in a competing state. Once an initial credit application has been approved, firms are required to file an annual application for each year's credit with documentation on the actual number of jobs created and retained during that year. Each year, the commission is required to issue a tax credit certificate in the amount of the credit for that year to the firm, who in turn must submit the certificate with its income tax return to the Department of Revenue. No firm may receive more in tax credits than was initially agreed upon by the commission.

The bill grants the commission authority to deny any initial application. In addition, the commission is authorized to audit the accounts of each firm within 12 months following the receipt of the credit by the firm. The commission is required to provide annual reports on the credits granted and claimed to the House and Senate Finance Committees and to share information with the Department of Revenue about each taxpayer for which they approved a credit.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1005 SPECIAL IMPROVEMENT DISTRICT IN SPECIAL DISTRICT

(Marostica—Veiga) Under certain circumstances, the bill allows a special district to establish a special improvement district within its boundaries to finance the costs of any improvements that the special district is authorized to finance. In order to establish a special improvement district, the power to levy assessments must be authorized in the special district's service plan or be approved by the county or municipality that approved the special district's service plan.

If a special improvement district is established, the assessments must be levied on a frontage, area, zone, or other equitable basis upon consent of 100 percent of the owners of the property, or upon voter approval of a majority of the eligible electors.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Support

Outcome: Signed by the Governor

HB09-1006 SEWER SYSTEM RATE USERS OUTSIDE BOUNDARY *(Kerr J.—*

Kopp) Required cities or towns setting sewerage system rates for owners of property outside the boundaries of the city or town, if the owners comprised more than 50% of all owners of property receiving the sewerage system service, to base the rates on the actual

cost of providing the service. Prohibited cities or towns from imposing arbitrarily higher sewerage system rates on owners of property located outside of the city or town or from discriminating against such owners solely on the basis of the location of their properties. Required a city or town to conduct a public hearing prior to fixing, changing, revising, or imposing a revised sewerage system rate on owners of property located outside the boundaries of the city or town. Allowed certain persons affected by sewerage system rates to challenge the rates in court.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1013 TIF EXCEPTION EMERGENCY SERVICES (*Sonnenberg*) This bill would provide that, if the first property tax year in which the excess of any payment of property taxes is allocated and paid into a special fund in connection with tax increment financing by an urban renewal authority commences on or after a specified date, no portion of any revenues from such excess that are allocated to any special district providing emergency services, including ambulance districts, fire protection districts, and certain metropolitan districts, shall be collected and paid into the special fund. In such cases, specified that all revenues collected from the excess of any payment of property taxes shall be distributed to the special districts providing emergency services as if there were no requirement to pay the excess into a special fund.

NAIOP Committee: **TAX SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1014 CONSERVATION EASEMENT OVERSIGHT (*Judd—Isgar*) Eliminates the cap on the amount of the fee paid to the Division of Real Estate (division) by:

- An appraiser in connection with submitting an appraisal for review; and
- An entity that holds a conservation easement in connection with an application to be certified.

Requires conservation easement holders to pay an annual fee to cover the costs of the division in reviewing appraisals of conservation easements and certifying entities that hold conservation easements. Authorizes the division to also accept and expend gifts, grants, and donations to cover such costs. Repeals the provision specifying that the certification of a conservation easement holder is effective for a 3-year period.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1034 ALLOW REGIONAL TRANSPORTATION AUTHORITY PROPERTY TAXES (*Liston—Gibbs*) This bill permits Regional Transportation

Authorities (RTAs) to impose a property tax of up to 5 mills, if approved by voters. The property taxing authority of RTAs would expire January 1, 2019.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1051 FEDERAL MINERAL MONEY FOR LOCAL ROAD

CONSTRUCTION (*Baumgardner*) For a 10 year period, would have required federal mineral lease revenues that are currently distributed to local governments by the executive director of the Department of Local Affairs through grants to be instead used to pay for recommended roadway and bridge construction projects. Required the executive director and the transportation commission, in consultation with certain entities, to develop a prioritized list of such projects.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1057 PARENTAL LEAVE ACADEMIC ACTIVITIES (*Kerr A.—Bacon*) This bill creates the Parental Involvement in K-12 Education Act. It allows a non-supervisory employee who works for an employer with at least 10 employees, to take unpaid leave for the purpose of attending parent-teacher conferences or other academic activities related to the educational advancement of the employee's child. The employer and employee may also agree to allow the employee to take paid leave and then make up the work time. The leave can be taken in no greater than 3 hour increments and is limited to 6 hours per month and 18 hours per academic year. The employee is required to provide one week notice prior to the leave, or as soon as possible in an emergency, and to provide written verification from the school of the academic activity. An employee may elect to use accrued paid vacation leave, personal leave, or other paid leave rather than take unpaid leave. The definition of employee does not include independent contractors, domestic servants, seasonal worker, or farm and ranch labor.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Opposed, Successfully Amended

Outcome: Sent to the Governor

HB09-1064 ECONOMIC OPPORTUNITY POVERTY TASK FORCE (*Kefalas—Sandoval*) The bill creates the 10-member Economic Opportunity Poverty Reduction Task Force comprised of 5 members from each chamber of the General Assembly. The task force shall meet at least 4 times during each interim. Members serve without compensation, but are to be reimbursed for expenses for up to 6 meetings per year. The task force is to prepare a report each year by January 15 to summarize its work and recommendations. It is repealed July 2014. The legislature may accept gifts, grants, and donation to support the task force and any such funding is continually appropriated to the legislature for this purpose. The task force shall only meet if the task force is selected as an approved interim committee by the Legislative Council, or the legislature receives sufficient gifts, grants, and donations to support the task force.

The task force is required to assess current state policies and practices that promote economic opportunity and poverty reduction, and make legislative recommendations to the Legislative Council. Duties of the task force include developing a comprehensive plan for reducing poverty by at least 50 percent and studying issues relating to poverty, nutrition programs, employment programs, self-sufficiency. The task force is to appoint subcommittees that include representatives of executive branch agencies, local governments, business and labor organizations, education, organizations,

advocates, and other interested parties. Subcommittee members serve without compensation or reimbursement for expenses.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1068 BUSINESS PERSONAL PROPERTY TAX EXEMPTION (*Lambert—Scheffel*) Required the general assembly to appropriate from the general fund to the newly created business personal property tax reimbursement fund (fund) an amount of moneys for each year after a specified date that there are peak general fund appropriations.

Exempted a percentage of all business personal property tax based on the percentage of a taxpayer's out-of-state sales, and increased the exemption as the transfers to the fund increased. Reimbursed counties, special districts, and municipalities for the decrease in property tax revenue associated with the business personal property tax exemption.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1069 WITHDRAWAL OF AN INITIATIVE PETITION (*Stephens—Kopp*)

The bill would have made it unlawful for any person, directly or indirectly, or through any other person:

- To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or valuable consideration to or for the proponents or the designated representatives of the proponents of an initiative petition, or to or for any other person, to compel, induce, or prevail upon the proponents or designated representatives to withdraw the petition from consideration as a ballot issue; or
- To receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration for withdrawing or agreeing to withdraw an initiative petition from consideration as a ballot issue.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1076 REMUNERATION FROM EMPLOYMENT SEPARATION (*Pace—Tochtrop*) This bill requires that all types of payments a claimant receives when leaving employment be treated the same in calculating when the claimant can begin receiving unemployment insurance (UI) benefits and the maximum allowable benefit. Under HB09-1076, any payments received are divided by the claimant's average weekly wage to calculate postponement of claim payments on a week for week basis. After the postponement, the claimant receives full benefits. Another provision of the bill is that benefits will not be reduced for claimants who also receive social security payments.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1080 BUILDING CODE OFFICIAL CIVIL IMMUNITY (*Marostica—Williams*) Grants qualified immunity from civil action to a building code official who, while acting in his or her official capacity, assists during a state of disaster emergency. NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**
Position: Support
Outcome: Signed by the Governor

HB09-1092 UTILITY NOTIFY EXCEPTION LANDSCAPE MAINTENANCE (*Peniston—Kester*) This bill exempts certain routine landscape maintenance activities from the excavation notification statute. In its place, if an underground facility is discovered in the area while performing routine landscape maintenance, the person performing the maintenance must notify the Utility Notification Center of Colorado (UNCC), cease the maintenance, and exercise reasonable care. Language was added to the bill ensuring that the landscaper's bear the burden of presumed liability. NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**
Position: Monitor
Outcome: Signed by the Governor

HB09-1093 CORPORATE TAXPAYER REPORTING REQUIREMENTS (*Levy—Veiga*) This bill establishes administrative and auditing measures to allow the Department of Revenue (DOR) to improve compliance with Colorado's corporate income tax reporting requirements. The bill adopts definitions of a real estate investment trust and a captive real estate investment trust established by the Multistate Tax Commission. In addition, the bill requires the disclosure of transactions that are described by specific sections of the Internal Revenue Code, the Code of Federal Regulations, and DOR rules. The bill establishes penalties ranging from \$15,000 to \$50,000 for a company that fails to disclose these transactions. The bill also establishes penalties of up to \$20,000 for material advisors that fail to disclose reportable transactions to the department. NAIOP Committee: **TAX SUBCOMMITTEE**
Position: Monitor
Outcome: Signed by the Governor

HB09-1105 CO INNOVATION INVESTMENT TAX CREDIT (*Kefalas—Scheffel*) This bill allows certain investors to receive an income tax credit for investments made in businesses involved in the research and development or manufacturing of new technologies, products, or processes during tax years 2010 through 2015. The bill creates the Colorado Innovation Investment Tax Credit Cash Fund. Gifts, grants, and donations deposited into this fund are authorized to be used to defray the costs of administering the tax credit.

The credit is equal to 15 percent of the investment for the tax year in which the investment is made and the following tax year, up to a maximum total of \$100,000. The credit is non-refundable, non-transferable, and may be carried forward for five years. The state may grant a maximum of \$3.0 million in credits during each tax year. If applications worth more than \$3.0 million qualify; they will be approved on a first-come, first-serve basis. If an application is not granted because the \$3 million limit is exceeded, the credit

will be given during the next two taxable years during which money is available under the limit.

In order to qualify for a credit, an investor must make an investment of at least \$25,000, may not own more than a 30 percent controlling interest in the small business immediately before making the investment, and cannot be a C corporation. In addition, the small business must:

- maintain its principal place of business in Colorado,
- have at least half of its gross assets and employee base located in Colorado,
- have less than \$2.0 million in annual revenue and total assets of less than \$5.0 million prior to receiving the investment,
- have been in operation for less than five years, and
- have at least two non-administrative, full-time-equivalent employees residing in Colorado.

An investor must apply for and receive a tax credit certificate from the Governor's Office of Economic Development. The tax credit certificate must then be presented to the Department of Revenue with the investor's income tax return. The bill requires the Office of Economic Development and the Department of Revenue to share information and specifies penalties for the misrepresentation of qualifications for the credit.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1108 PAYCHECK BOUNCE CAUSE INSUFFICIENT FUNDS (*Kerr A.—Boyd*) This bill adds employee protections and employer penalties to the Colorado Wage Act. It addresses situations when an employee's paycheck is not honored by the employer's bank causing the employee's account to have insufficient funds to pay bills. Employers are responsible for actual damages caused by the nonpayment, including associated late fees.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1109 FORECLOSURE PROTECT DELINQUENCY DEFAULT (*Priola—Veiga*) Amends the definition of a "residence in foreclosure" under the "Colorado Foreclosure Protection Act" to include a residence that is subject to a mortgage loan that is delinquent or in default but against which a foreclosure action, while authorized, may not yet have been commenced.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1114 DEVOLVE STATE COMMUTER HIGHWAYS TO LOCAL GOVERNMENTS (*Vaad*) Required the Department of Transportation, using existing or easily obtainable data, to determine which state highways and portions of state highways located within metropolitan planning areas are commuter highways and to report what it has determined to the transportation commission by a specified date. Required the commission to adopt a resolution that removes all of the highways and portions of

highways that the department has determined to be commuter highways from the state highway system as of a specified date. Defined a "commuter highway" as a highway or a portion of a highway that:

- Is part of the state highway system;
- Is located within the territory of a metropolitan planning organization; and
- Is determined by the traffic study conducted by the department of transportation to be used at least a specified percentage of the time, measured as a percentage of total trips on the highway or portion of a highway, for travel within the territory of the metropolitan planning organization.

Specified that the removal of a highway or a portion of a highway from the state highway system shall not be deemed to require the department to cease working on or funding an uncompleted highway project.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1117 UNEARNED COMPENSATION COMPANY PRINCIPALS (*Frangas*)

Prohibited unearned compensation given to a principal of a publicly traded business entity if it is undercapitalized or expected to become undercapitalized. Authorized an action by a shareholder, creditor, receiver, assignee, trustee, or the attorney general to recover the prohibited payment. Authorized damages and reasonable attorney fees for violations of the principal's fiduciary duty. Prohibited retaliation and subjects a person liable for such retaliation to treble damages plus attorney fees.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1126 ENCOURAGES SOLAR THERMAL INSTALLATIONS

(*Hullinghorst—Shaffer B*). Beginning in FY 2009-10, this bill makes all sales, storage and use of components used in solar thermal systems exempt from the state sales and use tax. The bill specifies various components for solar thermal systems that are affected, and defines such a system as one that uses the sun to produce heat or cold for:

- heating or cooling a residential or commercial building or water; or
- any industrial, commercial, or manufacturing process.

Finally, the bill allows local governments to provide the same financial incentives for solar thermal installations as are now be provided for solar electric installations.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1127 ECONOMIC DEVELOPMENT AND INCENTIVE ACT OF 2009

(*Miklosi*) Created a credit to be applied against state income tax liability for a qualified investment that creates jobs in a small business. Required an investment to be at least a specified amount and to be preceded by investments in each of the prior two years before it can be considered a qualified investment. Specified that the tax credit may be:

- Refunded to a taxpayer;
- Carried forward, if a portion of it is unused; and

- Transferred to another taxpayer if certain requirements are met.

Required the Colorado Office of Economic Development to determine the eligibility for the tax credit and issue tax credit certificates as evidence of eligibility and the amount of the tax credit. Required a taxpayer to submit a copy of the tax credit certificate in order to claim the tax credit.

NAIOP: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1129 PRECIPITATION HARVESTING PILOT PROJECTS (*Looper—Romero*) This bill establishes a pilot program for the collection of precipitation from rooftops for non-potable uses. The program can include up to 10 new residential or mixed-use developments. The program goal is to provide the following:

- an evaluation of the technical ability to determine how much precipitation returns to the natural stream system;
- a baseline set of data and methods to measure local precipitation patterns and ground water flow information;
- an evaluation of precipitation harvesting designs;
- the point at which precipitation harvesting causes injury to water rights; and
- data to adjudicate permanent augmentation plans.

The pilot program is effective until July 1, 2020. The pilot program will be carried out by the Colorado Water Conservation Board. The board will establish criteria and guidelines for the selection of pilot program applicants and will then select applicants. Program participants must submit an annual preliminary report to the board and the state engineer that summarizes findings regarding the program's goals. The office of the state engineer in the Department of Natural Resources will act in an advisory capacity.

NAIOP Committee: **WATER SUBCOMMITTEE & SUSTAINABILITY SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1134 CREATE COLORADO RAILROAD AUTHORITY (*Kefalas*) The bill established the Colorado Railroad Authority to create a rail system that would have served passengers in the I-25 and I-70 corridors. To help pay for the system, the authority could have issued tax-exempt bonds to be repaid from the following revenue sources:

- a sales and use tax of up to 0.4% across the state, if approved by voters;
- fees charged to passengers using the authority's rail service;
- local improvement districts, similar to those created by counties;
- value capture areas, somewhat similar to tax increment financing mechanisms; and
- development fees imposed on new construction within 2 miles of any authority track.

The authority would also have been able to condemn property through eminent domain. It would have been established as an independent entity, not subject to oversight by any state agency.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1136 ELECTRICAL ED LICENSE REQUIREMENTS (*Soper—Tochtrop*)

This bill sets renewal requirements for professional electrician licenses. The State Electrical Board in the Department of Regulatory Agencies (DORA) shall set standards and adopt rules for a program ensuring the continued competency of electricians. At a minimum, the rules must include the following:

- a test of the knowledge and skills required to renew a license;
- identification of a method to obtain the required knowledge and skills based on information obtained in the test; and
- documents necessary to confirm the professional is in compliance.

The bill adds new license requirements for the profession of journeyman electrician. In addition to existing requirements, an applicant for this license type must have at least 288 hours of training in safety, the national electric code, or other areas identified by the board. The board is instructed to strive to reduce barriers to license by endorsement or through reciprocity agreements with other states. The bill applies to all new and renewed licenses beginning January 1, 2011. In addition, this bill:

- modifies the definitions of terms regarding electricity, electricians, and the national electrical code;
- clarifies that electric power may be supplied by a renewable energy system;
- adds electric power from renewable energy systems to the categories of power subject to inspection and approval; and
- repeals the requirement that the board test persons for license renewal or registration, and replaces it with the continued competency program described above.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Oppose/Meet with Colorado Department of Labor.

Outcome: NAIOP did not actively engage in Opposing bill, Sent to Governor

HB09-1151 OVERSIGHT SCHOOL BUILDING INSPECTIONS (*Todd—Heath*)

Currently, school districts and junior colleges submit construction projects to the Division of Oil and Public Safety in the Department of Labor and Employment (DOLE) for review and approval. This bill places the review and approval activities within the Department of Public Safety (DPS) effective January 1, 2010. The bill's duties are carried out by the newly created Public School Construction and Inspection Section within the Division of Fire Safety. The bill also creates the Public School Construction and Inspection Cash Fund for the Department of Public Safety.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1155 TITLE INSURANCE RATE & FEE JUSTIFICATION (*Weissmann--Carroll M.*) Requires justification for a new or amended title insurance rate or fee to be filed with the commissioner of insurance, rather than retained at the principal Colorado office of the title insurance company or agent. States that such filing shall include the effective date of the rate or fee, and that the effective date shall be at least 30 days after the commissioner receives the filing.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1161 OIL & GAS VALUATION SUPPORTING DOCUMENTATION

(Baumgardner—Gibbs) Reduces the time for an oil and gas operator or owner to submit written documentation supporting a valuation statement to a county assessor.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1166 PAY-AS-YOU-DRIVE AUTO INSURANCE RATES *(Levy)* Directed the commissioner of insurance (commissioner) to adopt rules establishing a pay-as-you-drive (PAYD) rate structure for determining premium rates for automobile insurance policies using the miles driven as a factor in determining rates.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1167 COGCC WILDLIFE RULE IMPACT OIL GAS WELL *(McKinley)*

Prohibited the Colorado oil and gas conservation commission from promulgating any rule pursuant to the "Colorado Habitat Stewardship Act of 2007" that is intended to protect wildlife feeding, breeding, habitation, or migration, if such rule would have an adverse impact on any producing oil or gas well.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1174 EXEMPT PRE-1974 WELL DEPLETIONS *(Riesberg—Hodge)*

This bill specifies that augmentation plans within Water Division 1 (primarily the South Platte River Basin) that are either applied for or amended on or after the act's effective date shall not require the replacement of out-of-priority depletions that occurred prior to March 15, 1974. In the case of an amended plan for augmentation, the water judge may review all the terms and conditions of the plan.

NAIOP Committee: **WATER SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1183 CLASSIFY REAL ESTATE APPRAISER OFFENSES *(Vaad—Hodge)*

This bill increases the penalty for violations of law related to real estate appraisals. The bill clarifies that, among other things, it is illegal for real estate appraisers to:

- accept anything of value in order to influence the outcome of an appraisal;
- use fraud or misrepresentation to obtain a license; or
- conduct an appraisal in a fraudulent manner.

Penalties for a first offense are increased from a class 3 misdemeanor to a class 1 misdemeanor. Under current law, penalties for second offenses that occur within 3 years of an original conviction are a class 1 misdemeanor. This bill increases that period from 3

to 5 years. The penalties for second offenses that occur within 5 years of the original conviction are increased from a class 1 misdemeanor to a class 5 felony.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1187 ALLOW TOLLING OF EXISTING TOLL-FREE HIGHWAYS

(Swalm) Authorized the transportation commission to designate as toll highways and transfer to the administrative control of the statewide tolling enterprise, existing highways and highway lanes that serve vehicular traffic on a toll-free basis. Authorized the enterprise to use tolling to fund the planning, design, financing, operations, and maintenance of, and debt service payments on, its toll highways and to use congestion pricing as a mechanism for managing traffic congestion on its toll highways. As part of such authorization, specifically authorized the enterprise to impose tolls on high occupancy vehicles traveling on a toll highway that was previously used as a high occupancy vehicle lane. When recommending to the commission the designation of an existing highway or highway lane as a toll highway or designating a toll highway, required the enterprise or the commission, respectively, to consult with affected local governments and obtain the approval of affected metropolitan planning organizations and regional planning commissions in the same manner as when the enterprise seeks to construct a new toll highway.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1198 UNIFORM POWER OF ATTORNEY ACT *(McGihon—Morse)* This bill is recommended by the Colorado Commission on Uniform State Laws. It repeals the existing law regarding power of attorney and substitutes the uniform act recommended by the National Conference of Commissioners of Uniform State Laws. The new uniform law provides a set of default rules governing how people can deal with their property in case of future incapacity.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1207 FORECLOSURE PROCEDURES & DEEDS OF TRUST *(Gardner C.—Veiga)* The bill makes a number of changes related to real estate foreclosures which focus primarily on the operations and procedures of the public trustee and associated parties involved in foreclosure proceedings and the enforcement of a lien.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1213 HOUSING DEVELOPMENT GRANTS *(Gagliardi—Schwartz)* HB09-1213 creates the Housing Development Grant Fund in the State Treasury to be administered by the Division of Housing in the Department of Local Affairs. The fund shall consist of moneys appropriated to the Colorado Affordable Housing Construction

Grants and Loan Program by the General Assembly, all moneys collected by the division for purposes of the act from federal grants, and other contributions, grants, gifts, bequests, and donations received. The bill authorizes the division to solicit, accept, expend, and disburse moneys in the fund to make grants or loans. Moneys in the fund are continuously appropriated to the division.

Upon approval by the State Housing Board, the bill authorizes the Division of Housing to make grants or loans to improve, preserve, or expand the supply of affordable housing and to finance foreclosure prevention activities in Colorado. Any unexpended or unencumbered moneys in the fund at the end of any fiscal year will remain in the fund. Finally, the division's authority to make a grant or loan from moneys in the fund to finance foreclosure prevention activities is repealed effective June 30, 2011.

NAIOP Committee: **HOUSING SUBCOMMITTEE & GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

HB09-1228 SMALL BUSINESS COST-BENEFIT ANALYSIS OF RULES

(Stephens—Penry) Required each state agency adopting an administrative rule to submit to the executive director of the Department of Regulatory Agencies a cost-benefit analysis of how the rule applies to a small business in the state. Required the agency to make the analysis publicly available. Permitted the executive director to use the analysis to determine whether an additional cost-benefit analysis should be conducted by the agency. Reduced the time to complete the additional cost-benefit analysis. Required each agency to submit a copy of each cost-benefit analysis for each rule from the prior year to specified legislative committees.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1238 CIVIL FORFEITURE *(Rice—Shaffer B.)* Added a building knowingly used for housing or place of employment for a victim of human trafficking to the list of buildings that may be forfeited. Repealed specific requirements for forfeiture actions, including but not limited to the following:

- That a conviction must be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought;
- That in specified circumstances a forfeiture action may proceed and judgment may be entered without a criminal conviction of the owner; and
- That all forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation.

Allowed a court to order any property subject to forfeiture to be sold by a sheriff in the manner provided for sales on execution. Stated how the proceeds of the sale shall be applied, including providing funding for mental health treatment and a victim notification network. Repealed the requirement that an annual forfeiture report be filed with the department of local affairs.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

HB09-1248 BUSINESS ENTITIES REGULATION (*Gerou--Shaffer B.*) The bill makes several technical and substantive changes to the filing and record keeping operations of the Business Division in the Department of State. Specifically, the bill:

- clarifies information that must be filed to extend a life of a corporation;
- eliminates the requirement that articles of incorporation state the duration for which the association is to exist;
- requires certain information to be updated when an annual report is filed or a trade name or trademark is renewed;
- eliminates the requirement that the Department of State mail notice of delinquency in certain instances;
- clarifies the requirements for economic interest and capital contributions for a person to be admitted as a partner to a general partnership or limited partnership; and
- modifies the requirements for boards of directors of nonprofit corporations to take action without a meeting.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

HB09-1276 DELAY FORECLOSURE RESIDENTIAL PROPERTY (*Ferrandino--Carroll M.*) The bill allows an eligible borrower to defer a foreclosure sale on a residential property for 90 days. The borrower must contact a foreclosure counselor within 20 days after the notice of election and demand is received by the public trustee of the county in which the property is located. A notice of election and demand is the document that starts the foreclosure process once recorded. A foreclosure counselor is defined as a housing counselor employed by an agency approved by the United States Department of Housing and Urban Development, including housing counselors affiliated with the Colorado Foreclosure Hotline and the Hope for Homeowners Hotline. Foreclosure counselors would have immunity and would not be liable to any person for approving or failing to approve a borrower for a foreclosure deferment or for certifying or declining to certify an early termination.

If a loan holder receives notice that a borrower is eligible for a loan deferment, the loan holder must defer the foreclosure for 90 days. The bill identifies criteria that a foreclosure counselor must consider when determining whether a borrower is eligible for a loan deferment. The borrower must make payments during the 90-day deferment period equal to two-thirds of the monthly payment due prior to delinquency, plus one-twelfth of the annual amount due for taxes and insurance.

The Division of Housing in the Department of Local Affairs would provide a description of the foreclosure deferment program to foreclosure counselors. The division would also develop a standard form in English and Spanish that can be posted on the front door of a property that is the subject of a notice of election and demand that provides information regarding how to pursue a mortgage foreclosure deferment. The bill is repealed, effective June 30, 2011.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose, then Monitor after amendments

Outcome: Sent to the Governor

HB09-1288 COLORADO TAXPAYER TRANSPARENCY ACT (*Nikkel—Kopp*)

This bill requires the Governor's Office of Information Technology (OIT) to create and maintain a searchable database website with revenue and expenditure data from the state's Financial Data Warehouse (FDW). The FDW is a tool that allows a user to obtain information from the state's accounting system. The bill requires each state agency website to include a link to the searchable budget database. The database must be made publicly available no later than January 1, 2010.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1289 SPECIES CONSERVATION TRUST FUND LIST (*Curry—Isgar*)

This bill appropriates money from both the operation and maintenance account and the capital account of the Species Conservation Trust Fund for programs submitted by the executive director of the Department of Natural Resources. These programs are designed to conserve native species listed as threatened or endangered under state or federal law, are candidate species, or are likely to become candidate species as determined by the United States Fish and Wildlife Service.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1309 BOILER INSPECTIONS (*Pace—Tochtrop*) This bill was introduced at the behest of Xcel Energy, who had concerns that current practices placed an unnecessary burden on older boilers. This bill authorizes a boiler inspector to require a boiler or pressure vessel to undergo a pressure test to assess its leak tightness capability. The owner of the boiler or pressure vessel is responsible for the labor and costs required for conducting the pressure test. In addition, the allowable fluid temperature for a domestic water heater is increased from 200 to 210 degrees Fahrenheit.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

HB09-1349 CONTINUE HEALTH CARE AFTER EMPLOYMENT (*Fischer*)

Allows an employee who has been terminated from employment the right to continue health care coverage with a 65% premium subsidy if the employee is an assistance-eligible individual.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1357 FILING CAMP FINANCE REPORTS WITH SOS (*Vigil—Schwartz*)

Requires that specified campaign finance reports (reports) currently required to be filed with the county clerk and recorder be filed instead with the secretary of state (secretary). Requires candidates in special district elections, the candidate committees of such

candidates, political committees in support of or in opposition to such candidates, issue committees supporting or opposing a special district ballot issue, and small donor committees making contributions to such candidates to file reports with the secretary.

Except as specified in statute, requires other candidates, candidate committees, issue committees, political committees, and small donor committees to file reports with the secretary. Specifies requirements necessary to move control of data pertaining to reports and filings in the electronic filing system maintained by the secretary from county clerk and recorders to the secretary.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1359 HOA BOARD GOVERNANCE RESERVE STUDIES (*Kerr A.*)

HB09-1359 requires all members of the executive board of a common interest community's unit owners' association (HOA) to receive relevant information related to the HOA's operation. The bill establishes the same standards for election or appointment as a chair of an HOA committee, to which authority may be delegated, as it applies to the election or appointment of members on the executive board. Effective July 1, 2010, each HOA is required to commission a reserve study at least every three years and to identify how it proposes to pay for scheduled repair or replacement of reserve assets.

The bill becomes effective August 5, 2009, assuming the General Assembly adjourns sine die as scheduled on May 6, 2009, unless a referendum petition is filed, and applies to acts occurring on or after that date.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & HOUSING SUBCOMMITTEE**

Position: Oppose

Outcome: Passed

HB09-1360 RESIDENTIAL VALUATION RATIO (*Judd—Sandoval*) This bill addresses property taxes for residential real property as required in the State Constitution. Section 3 (1) (b) of Article X of the State Constitution, more commonly referred to as the Gallagher Amendment, requires the General Assembly to establish the ratio of valuation of assessment for residential real property, or residential assessment rate, every two years at a rate that satisfies the requirements of the amendment. HB 09-1360 establishes the residential assessment rate at 7.96 percent for tax years 2009 and 2010, the same rate in place since 2003.

NAIOP Committee: **TAX SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

HB09-1362 LOCAL GOVERNMENTS FINANCE ASSIST HIGHER ED (*May—Boyd*) The bill allowed local governments to establish either sales or property tax-funded community college service area districts, with voter approval. The bill also allowed counties to establish districts to help fund state colleges. Upon the passage of a resolution by the state board for a community or state college, the bill authorized the governing body of at least two counties or municipalities, or any combination of at least two local governments, to form such a district and seek voter approval for a tax increase. Districts

could have placed a limit on the amount of revenue that could have been received and used revenue for either community or state colleges to:

- assist residents in the district to defray tuition expenses;
- provide supplemental funding for current or future programs;
- construct new or renovate existing facilities;
- provide funding for technology enhancement and supplemental equipment; and/or
- perform other functions jointly agreed upon by the district and the state board.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-008 DEADLY FORCE AGAINST INTRUDER BUSINESSES (*Harvey—Gardner C.*) This bill would have extended the right to use deadly physical force against an intruder under certain conditions to include owners, managers, and employees of places of business.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-019 GRANTS ZONING CHANGES MENTALLY ILL (*Boyd—Solano*) The bill was brought by the Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness who are Involved in the Criminal and Juvenile Justice Systems. Created a pilot program to award a specified number of one-time grant payments in a specified amount to local governments as an incentive for a local government to modify or waive the zoning laws or other land development regulations of the local government for the purpose of authorizing the construction or use of one or more structures or facilities that would provide residential or transitional housing for adults with mental illness or co-occurring disorders who are either currently involved in the criminal justice system or who have been involved in the system in the past. Assigned responsibility for administering the pilot program to the interagency advisory committee on adult and juvenile correctional treatment (committee).

Specified procedures governing the process by which local governments may apply for grant awards, the permissible uses of grant moneys, and criteria for the committee to use in evaluating grant applications. Specified the powers and duties of the committee with respect to the pilot program. Required grant recipients to report on the status of a grant award by a specified date. Created a fund in the state treasury for the receipt of moneys either appropriated to or collected for the grants program. Repealed the act on a specified date.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-022 STATE LAND BOARD INVESTMENT & DEVELOPMENT FUND

(*Bacon—Solano*) This bill increases from \$1.0 million to \$5.0 million, over 3 years, the annual limit of payments generated from state school lands that can be credited to the State Board of Land Commissioners Investment and Development Fund and removes the repeal of the fund. SB09-022 authorizes the board to take actions necessary for a portion

of state or school lands to be incorporated, annexed, or otherwise included within a local government entity for land use planning and land entitlement purposes. The board is exempted from certain requirements pertaining to professional service contracts when making expenditures from the fund.

NAIOP Committee: **GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

SB08-028 REAL ESTATE LICENSE FEE INCREASE LIMIT (*Harvey—Gerou*)

This bill places limits on the amount of fees charged by the Division of Real Estate in the Department of Regulatory Agencies (DORA). The division cannot increase fees more than 20 percent in any year, and no more than 50 percent in any 10 year period, or between sunset reviews, whichever is greater.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-051 RENEWABLE ENERGY FINANCING ACT (*Carroll M.—Levy*) SB09-051

contained language, which was opposed, that allowed tenants the right to an annual energy audit. Opposition was not directed at the goal of providing tenant with information on energy efficiency, but rather the problematic language which was inserted into the “tenant’s rights” provision of the landlord tenant act. This language allowed potentially unfettered access by tenants and their contractors to critical locations in buildings including heating, cooling and other central operations that serve entire complexes. After lobbying the floor of the Senatem the detrimental language was removed from the bill. The remaining portions of the legislation increase the amount that the state treasurer may invest as part of the Colorado Clean Energy Finance Program. The amount is increased from \$30 million to \$40 million of state moneys in bonds or notes issued by participating public or private lenders for the purpose of funding clean energy loans from FY 2008-09 through FY 2010-11. The cap on loans guaranteed by the state treasurer is increased from \$10 million to \$15 million during FY 2008-09, and to no more than \$25 million during the two-year period of FY 2008-09 through FY 2009-10. Subject to the limitations in current law on the investment of state moneys by the state treasurer, up to \$10 million during FY 2008-09, and a total of up to \$15 million during FY 2009-10 and FY 2010-11 may be invested in projects related to clean energy loans.

SB09-051 provides for the facilitation of clean energy loans for large-scale commercial, industrial, and institutional installations of solar electric generation facilities which hold great potential for clean energy development but have certain limitations concerning economic feasibility. A participating public or private lender may finance one or more clean energy improvements to commercial, industrial, or government-owned real property, subject to certain conditions. Finally, the bill states that the supply of electricity or heat to a consumer from solar generating equipment not owned by the consumer, but which is located on the consumer's property, shall not be subject to regulation as a public utility by the Public Utilities Commission.

NAIOP Committee: **HOUSING SUBCOMMITTEE**

Position: Amend

Outcome: Successfully Amended and Signed by the Governor

SB09-060 ILLEGAL DRUG LABORATORY TESTING (*Tochtrop—Soper*) The bill defines the term “illegal drug laboratory” to be areas where controlled substances are manufactured, processed, cooked, disposed of, used or stored, and also includes nearby areas. In addition, the State Board of Health is required to establish procedures for the testing and evaluation of contamination caused by an illegal drug laboratory. Any contract to sell contaminated property cannot limit the right of the buyer to test the property or to cancel the contract based upon the results of the tests.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

SB09-063 LIMIT EMINENT DOMAIN RAILROADS (*Brophy--Gardner C.*) Except in limited circumstances, prohibited a corporation formed for the purpose of constructing a railroad line, or for operating such a line, (railroad) from condemning real estate or rights-of-way. Prohibited a railroad from transferring ownership of property or rights-of-way acquired through the exercise of eminent domain to any other person or entity.

Required a railroad to comply to the extent practicable with all laws that govern the use of eminent domain by the Department of Transportation for state highway purposes. In connection with proceedings for the acquisition or condemnation of property by a railroad, in addition to any compensation awarded to the owner in an eminent domain proceeding, required the railroad to reimburse the owner whose property is being acquired or condemned for all of the owner's reasonable attorney fees and court costs incurred by the owner in connection with such proceedings.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-064 LOCAL INSPECTIONS PLUMBING ELECTRIC (*King K.—Massey*) Currently, plumbing and electrical inspections for new construction, remodeling, or repair of public school buildings must be conducted by a state inspector. This bill permitted cities and counties to perform inspections on public school buildings, provided that the inspectors have achieved either journeymen or master licenses in their trades. Inspections must meet state and local codes adopted for that jurisdiction. The state has adopted the 2008 National Electric Code for its electrical code and the 2006 International Plumbing Code for its plumbing code.

Any city or county that wishes to change its current plumbing inspection responsibilities must file with the Department of Regulatory Agencies (DORA) its intent to do so. The filing must be made by the October prior to the July in which the governmental entity will either begin or cease to inspect. This aligns the plumbing inspection statute with the electrical statute.

NAIOP Committee: **BUILDING OPERATIONS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-070 CLARIFY WORKERS' COMPENSATION PROCEDURES (*Foster—Acree*) This bill conforms the workers' compensation statute with sections of the law that were amended in a prior session, clarifies certain sections, and deletes a section that was found to be unconstitutional. The conforming language states that the first installment of compensation is paid within 20 days after a claim is filed. It matches language that makes a hearing for the issue of an employer's default optional. The bill clarifies that the Office of Administrative Courts (OAC) will not hear a matter pending before the Director of the Department of Labor and Employment. It also clarifies that in an appeal, the records are transmitted by the Division of Workers' Compensation or the OAC, depending on where the petition is filed. The section that terminated benefits for injured workers when they reach 65 was found to be unconstitutional and is deleted.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

SB09-080 PRECIPITATION COLLECT LIMITED EXEMPTIONS (*Isgar—Looper*)

This bill allows for the collection of precipitation from up to 3,000 square feet of a roof of a residence that is not connected to a domestic water system serving more than three single-family dwellings. The collected water must be used for:

- ordinary household purposes;
- fire protection;
- watering of animals and livestock; and
- irrigation of not more than 1 acre of gardens and lawns.

A person wanting to capture rooftop precipitation who meets the qualifications in the bill must submit an application and pay a fee to the state engineer. Owners of certain wells are allowed to collect rooftop precipitation under the same use limitations as contained in their well permits.

NAIOP Committee: **WATER SUBCOMMITTEE & SUSTAINABILITY SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

SB09-085 PHASE OUT BUSINESS PERSONAL PROPERTY TAX (*Scheffel & Williams--Rice & Priola*) Under current law, a business is exempt from paying property taxes on its personal property if the actual value of its equipment is less than \$4,000. The threshold for the exemption rises to \$7,000 by tax years 2013 and 2014.

This bill, as introduced, provided a further exemption for business personal property. Beginning in tax year 2009 and continuing through 2027, this bill increases the percentage of business personal property that is exempt from taxation from 1 percent to 100 percent of all locally assessed property. State assessed personal property is excluded from the provisions of the bill. The bill was amended by Senate Appropriations to create an informal task force to study the above.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & TAX SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-087 SPECIAL DISTRICTS ACCOUNTABILITY (*Carroll M.—Peniston*)

The bill requires that information about special district audits and budgets be posted on the official website of the Division of Local Government in the Department of Local Affairs in a form that is readily accessible to the public. Further, the division must provide certified election results to the Secretary of State. The Secretary of State must post the election results on its official website.

The board of any metropolitan district with more than \$25,000 of annual revenue or with total authorized debt of more than \$1,000 per elector is required to maintain a list of eligible electors of the district who have applied for permanent mail-in voter status. In an election conducted by the board, the board would mail a mail-in ballot to each eligible elector on the list. The board of a metropolitan district would annually provide notice to eligible electors that include specified information about the special district and its elections. The notice would either by through a separate mailing to each household, including the notice as a prominent part of an informational mailing, posting on the district's official website, or through a posting on the website of the statewide association of special districts.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-094 CREATE TRANSIT AND RAIL DIVISION IN CDOT (*Williams—Levy*)

This bill creates the Transit and Rail Division within the Colorado Department of Transportation (CDOT) to further integrate transit and rail into the statewide transportation system. It also requires that a new transit and rail committee be appointed to assist the statewide transportation advisory committee on transit and rail issues. Finally, the bill allows the CDOT's executive director to retain certain rail lines or rights-of-way possessed by the department.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-108 TRANSPORTATION SYSTEM PLANNING & FUNDING (*Gibbs—Rice*)

The bill makes several changes to the financing and administration of transportation improvements. It also creates several new functional units within the Colorado Department of Transportation (CDOT) all of which are established as government-owned business enterprises with the authority to issue revenue bonds. Specifically, the bill:

- increases fees, fines, and surcharges to provide an estimated \$250 million in new annual funding for statewide transportation improvements;
- creates the Statewide Bridge Enterprise with the authority to finance, repair and maintain certain designated bridges in the state highway system, and to impose a bridge safety surcharge to repay bonds;
- creates the High-Performance Transportation Enterprise to enter into public-private partnerships and assess user fees on existing highways to repay bonds issued for transportation infrastructure projects;
- requires CDOT to create a standing efficiency and accountability committee charged with seeking ways to maximize the efficiency of the department.

NAIOP Committee: **INFRASTRUCTURE SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

SB09-142 ANNEXATION OF RIGHTS-OF-WAY (*Tochtrop*) In establishing the boundaries of any area proposed to be annexed, if a portion of the area adjoins a platted street, alley, or road or if a portion of such a street, alley, or road is annexed, required the entire width of the street, alley, or road right-of-way, to the extent the street, alley, or road adjoins the area to be annexed, to be included within the area annexed unless otherwise provided in a separate written intergovernmental agreement between the governing bodies of the annexing municipality and each county in which the area proposed for annexation is located.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-145 AUTOMATIC SUSPENSION CONDEMN PROCEEDINGS (*Schultheis*)

In connection with the exercise of the power of eminent domain by the state or any political subdivision, in the absence of an imminent threat to the public health or safety, required proceedings seeking condemnation of property to be automatically suspended until the completion of a specified period that commences with the publication of the notice of intent to take or condemn property at the outset of the proceedings. Specified that, following the completion of the automatic suspension, the condemnation proceedings may be resumed as provided by law.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-158 PRIVATE LAND CONSERVATION INCENTIVE (*Isgar—Baumgardner*)

This bill requires the Department of Natural Resources to carry out a study of federal and state landowner conservation programs that offer monetary compensation to landowners who set aside lands or adopt specific land management strategies. The purpose of the study is to gather the following data and information about state and federal programs that exist or are created before February 1, 2010:

- the amount and types of Colorado lands in the program;
- methods and costs to administer the program; and
- the program's benefits to lands, the environment, and wildlife.

The department should consult with federal agencies, relevant state agencies, landowners, wildlife conservation groups, and a newly created Agriculture Industry Task Force to explore whether or not the state should replace discontinued federal programs. The department's findings and recommendations must be presented to the Agriculture Committees of the General Assembly on or before February 1, 2010.

The bill requires the Department of Agriculture to form a task force to provide input to the Department of Natural Resources in carrying out this study. The size and composition of the task force is at the discretion of the Commissioner of Agriculture.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-159 DEPENDENT HEALTH CARE COVERAGE (*Sandoval—McGihon & Benefield*) The bill changed the age of an individual for which a health insurance carrier is required to offer dependent coverage from 25 to 30. It also prohibited insurance carriers from terminating coverage for dependents who take a medical leave of absence from an institution of higher education. The carrier could terminate the coverage one year after the leave of absence began or the date the coverage would otherwise have been terminated.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Postponed Indefinitely

SB09-168 WORKERS' COMPENSATION PROCEDURES (*Tochtrop—Soper*) This bill amends procedures in the Workers' Compensation Act that relate to claims settlement, hearing and review. The changes that relate to settlement and hearing procedures address when a matter can proceed to hearing after an insurance carrier files an admission of liability for final payment of compensation. A claimant, who disputes the admission and has requested an independent medical examination (IME), is not required to file a request for hearing until the IME process is terminated for any reason. Issues, for which a hearing or an application for a hearing is pending when an admission is filed, are allowed to continue to the hearing without the claimant re-filing an application for the hearing.

In terms of review procedures, any party dissatisfied with an order that requires payment or denies benefits, may file a petition to review the order. The bill clarifies that petitions are to be filed with the Division of Workers' Compensation if the Director of Workers' Compensation entered the order or with the Denver Office of Administrative Courts if the order was entered by an administrative law judge.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Signed by the Governor

SB09-178 UNEMPLOYMENT INSURANCE ATTACHED TO REGULAR JOBS (*Heath—Liston*) This bill requires the director of the Division of Employment and Training to waive the requirement for employees attached to regular jobs to register for work and report to an employment office as a condition of being eligible to receive unemployment insurance (UI) benefits for a period of 26 weeks. These are claimants who are unemployed due to a temporary lack of work from their most recent employer, but anticipate returning to work with that employer.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

SB09-180 FIREFIGHTER & LAW ENFORCEMENT COLLECTIVE BARGAIN (*Tochtrop—Casso*) This bill creates an advantage for labor unions to organize local government firefighters. Gives firefighters the ability to form a union and bargain collectively concerning the conditions of their employment or to address grievances. Once designated, a union is given the authority to act as the exclusive representative of

firefighters. The bill applies to public employers, i.e., municipalities, counties, and special districts. The bill does not apply to public fire departments where a collective bargaining agreement already exists as of the effective date, or who employ less than 25 firefighters.

If 30 percent of firefighters in a bargaining unit petition the American Arbitration Association (AAA), the association will conduct an election by secret ballot and certify an employee organization as the exclusive representative of the bargaining unit for collective bargaining. Firefighters may also request a vote to decertify an existing employee organization.

If a public employer and the union are unable to reach an agreement concerning the terms of an employment contract, the parties must hire a fact-finder and permit fact-finder hearings. Any cost for fact-finders must be shared between the parties. If either party rejects the fact-finder's recommendations, each unresolved issue shall be decided by a vote of the people at a special election. The cost of the special election must be borne by whichever party refused to accept the recommendation. If both parties refused, the costs must be shared between them. Finally, the bill prohibits firefighters from striking.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-212 STATE SALES TAX VENDOR FEE CAP (*White—Pommer*) This bill was recommended by the Joint Budget Committee as part of the budget balancing package for FY 2008-09. It temporarily reduces the amount that vendors can retain (vendor fee) to compensate for sales tax collection expenses. The bill lowers the vendor fee rate from 3 1/3 percent to 1.35 percent for monthly filers. The bill covers returns made on or after March 1, 2009, through December 31, 2011. Vendors are given a one-month grace period, from March 1, 2009 to April 1, 2009, during which interest and penalties are waived for errors made in remitting sales tax revenues that may result from the change in the vendor fee. The bill is repealed December 31, 2013.

NAIOP Committee: **TAX SUBCOMMITTEE & GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose, Successfully Amended

Outcome: Signed by the Governor

SB09-221 PROPERTY TAX CREDIT TO SUPPORT ED (*Lundberg—Lambert*) For a total of four property tax years, created a property tax credit for tuition payments to an independent or parochial school or other educational expenses for a student who previously attended a public school (credit). Established who may claim the credit and the maximum amount of the credit. Prohibited the credit from being refunded or carried forward to a subsequent property tax year. Required an affidavit, which must include certain information, to be submitted in order to claim the credit. Permitted the credit to be transferred and established transfer procedures.

Established a mechanism for a county treasurer to be reimbursed by the state treasurer from the state general fund for local revenue lost as a result of a taxpayer claiming the credit. Specified that the credits shall not affect a school district's share of its total program for purposes of the "Public School Finance Act of 1994".

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & TAX SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-228 FLEXIBILITY TO USE STATE REVENUES (*Morse—Marostica & Court*)

This hotly contested legislation has been referred to as the repeal of the Bird/Arveschoug amendment, long thought to curb government spending. The statute was enacted in the early 1990s prior to the passage of TABOR. SB 09-228 was introduced with the intent of giving some flexibility to the state by repealing the 6 percent limit on General Fund (GF) appropriations. The bill alters the limit on General Fund (GF) appropriations, repeals the SB 97-1 diversion and HB 02-1310 transfers, and requires alternative transfers (subject to triggers) to transportation, capital construction, and the General Fund statutory reserve. Under current law, General Fund appropriations are limited to the lesser of a 6 percent increase from the previous year's appropriation level and 5 percent of Colorado personal income. SB 09-228 sets the limit equal to 5 percent of Colorado personal income. The bill also modifies statutes that are contingent on the 6 percent limit on GF appropriations.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-229 CO OIL & GAS COMMISSION WILDLIFE PROTECTION (*Isgar—Curry*) Required the Colorado Oil and Gas Conservation Commission (commission) to obtain consent from a surface owner or the surface owner's appointed tenant prior to imposing any conditions for wildlife resource protection pursuant to the "Wildlife Habitat Stewardship Act of 2007". Required the commission to employ off-site mitigation measures if the surface owner or tenant withholds such consent.

NAIOP Committee: **SUSTAINABILITY SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-234 ENTERPRISE ZONE RECOMMENDATIONS TO GA (*Mitchell—Rice*)

This bill, recommended by the Joint Select Committee on Job Creation and Economic Growth, directs the Economic Development Commission with assistance from the Colorado Office of Economic Development and International Trade to submit a report to the General Assembly that:

- recommends criteria for the creation of a statewide enterprise zone;
- evaluates whether to expand the boundaries of existing enterprise zones; and
- determines whether state income tax credits under the program should be modified.

The commission is required to submit its report to the General Assembly on or before December 31, 2009 via electronic mail.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Passed

SB09-238 ENFORCE LIMITED LOCAL FEES SOLAR PANELS (*Mitchell—*

Solano) This bill defined "permit fees" as the total compensation received by a county or municipality for approval of the installation of an active solar energy device, from any source or in any way connected with the installation. Such fees were limited to the lesser of the local government's actual costs of issuing the permit, or \$500.

The bill created a private right of action for an individual against a local government that violated this limit. The bill directed the court to award attorney's fees to the prevailing party in such an action, and if the plaintiff is the prevailing party, three times the total amount of unauthorized fees.

NAIOP Committee: **SUSTAINABILITY SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-240 RTD REVENUE AUTONOMY (*Shaffer B.*) Authorized the Regional Transportation District to submit questions to the eligible electors of the district to increase the rate of the sales tax levied by the district. Specified the procedures for conducting the election at which the questions are submitted.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Postponed Indefinitely

SB09-247 EXPAND UI BENEFITS FEDERAL STIMULUS MONEYS (*Tochtrop—Pace*) This bill expands the availability of unemployment insurance (UI) compensation benefits to certain unemployed individuals and enables the state to receive and expend funds from the federal "American Recovery and Reinvestment Act of 2009". Eligibility for benefits is expanded to include individuals who leave a job for certain compelling family reasons including:

- to accompany a spouse whose employment location has changed;
- to care for a family member who is ill or disabled; and
- domestic abuse.

These expanded benefits are to be charged to the UI Trust Fund and not affect an employer's premium. Another component of SB09-247 allows an unemployed individual to designate an alternative base period in order to qualify for benefits. Finally, \$15 million in enhanced UI compensation benefits will be available to claimants participating in an approved training program for the following three fiscal years.

The Division of Employment and Training in the Department of Labor and Employment is responsible for implementing the bill, adopting rules, developing and improving outreach efforts, and submitting an annual report to the General Assembly on the status of the enhanced UI compensation benefits program and resulting outcomes.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose, Successfully Amended

Outcome: Passed

SB09-248 PUBLIC WORKS CONTRACTS SURETY REQUIREMENTS (*Heath—McNulty*) This bill allows a contractor to provide a letter of credit in lieu of the other forms of surety on public works contracts and limits the surety to one-half of the amount payable in each calendar year.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

SB09-249 HOA APPLY NEW LAW TO EXEMPT SMALL CICS (*Penry.--Kerr A.*)

The bill requires certain small communities under the Colorado Common Interest Ownership Act to allow:

- the display of American flags, service flags, and political signs;
- the parking of emergency vehicle by residents employed as first responders;
- the trimming of vegetation for fire mitigation purposes;
- modifications required for accessibility by a resident with disabilities; and
- the installation or use of energy efficiency measures.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE & GROWTH SUBCOMMITTEE**

Position: Monitor

Outcome: Sent to the Governor

SB09-273 PINNACOL ASSURANCE AUGMENT STATE REVENUE (*White—*

Marostica) This bill is recommended by the Joint Budget Committee as part of the budget package requires the board of Pinnacol Assurance (Pinnacol) to transmit \$500 million from Pinnacol's surplus funds to the General Fund between July 1, 2009, and September 1, 2009. The bill removed statutory language stating Pinnacol's revenues, moneys, and assets belong solely to Pinnacol and are not available to the state.

NAIOP Committee: **GENERAL BUSINESS SUBCOMMITTEE**

Position: Oppose

Outcome: Bill Defeated

SB09-275 ELIMINATE STATE SALES TAX VENDOR FEE (*Tapia—Ferrandino*)

Temporarily eliminates the ability of vendors to retain a fee for compensation of sales tax collection expenses from July 1, 2009, through June 30, 2011. Vendors are allowed a grace period on returns made prior to August 1, 2009, during which interest and penalties are waived for errors made in remitting sales tax revenues due to the change in the vendor fee. However, if the September 2010 forecast prepared by the Legislative Council Staff indicates sufficient revenue to fund an increase in General Fund appropriations up to the 6 percent limit for FY 2010-11, the vendor fee will return to a 3 1/3 percent level on January 1, 2011.

NAIOP Committee: **TAX SUBCOMMITTEE & GENERAL BUSINESS SUBCOMMITTEE**

Position: Opposed

Outcome: Sent to the Governor