S. 3591, "Commercial Building Modernization Act"
Reforms the 179D Tax Deduction for Energy Efficient Commercial and Multifamily Buildings

- ***What is the 179D tax deduction?***
  The tax deduction at Section 179D of the Internal Revenue Code encourages energy efficiency in building design and construction. 179D covers private sector commercial buildings like offices, stores, hotels, warehouses, plants, and apartments. It also covers government buildings like schools, hospitals and military facilities. Section 179D was first enacted as part of the 2005 Energy Policy Act, and was last extended in 2008. It is important to note that 179D provides a tax *deduction* on the income subject to taxation, not a *credit* that lowers tax liability on a dollar-for-dollar basis.

- ***What does the Commercial Building Modernization Act (S. 3591) accomplish?***
  S. 3591 would extend the 179D tax deduction (scheduled to expire at the end of 2013) for five more years. The bill makes key improvements to 179D to improve its usefulness to building owners – and would help achieve major reductions in our nation's energy consumption, spur American construction jobs, and move us closer to energy independence.

- ***Energy efficiency is often called the "fifth fuel." What does that mean?***
  Efficiency should join coal, petroleum, nuclear and renewables to meet Americans' demands for energy. Taxpayers get more "bang for the buck" by investing in building efficiency projects that avoid energy use, compared to more expensive technologies to develop new energy sources.

- ***How much energy is consumed by commercial buildings and their occupants?***
  The Energy Information Administration reports that all buildings account for 41% of energy consumption in the U.S. Of this amount, about half is attributed to homes and the other half to commercial buildings. Sound energy policy should thus include incentives to encourage more efficient commercial and larger multifamily properties.

- ***Does 179D favor specific products or technologies?***
  No. The 179D deduction is a technology-neutral incentive that does not pick "winners and losers." It encourages retrofit *projects* and not specific *products*. It gives building owners the opportunity to select the best mix among a suite of measures to achieve optimal energy efficiency gains.

- ***It's been said that 179D corrects a flaw in the tax code. How so?***
  The tax code allows businesses to deduct utility bills as part of their ordinary operating expenses – but retrofit investments can only be depreciated over long time periods as capital expenses. More inefficient structures with higher utility bills may thus benefit from a larger tax deduction compared to buildings that use less energy. 179D aligns the code so that it awards investments to *save* energy, as opposed to the operating expenses deduction that can otherwise be claimed for *wasted* energy.

- ***Has 179D been successful in encouraging building efficiency?***
  It has achieved success, but there is room to improve. In FY'10, 179D's actual expense was only $60 million -- $120 million *less* than the score it received from JCT that year. To date, 179D has been largely used for "partial" building system upgrades (especially lighting). It has also encouraged greater efficiency in simple, single-use structures (like warehouses and owner-occupied, low-rise offices). To date, 179D has also been geared to encourage energy efficient *new* construction, which has fallen-off due to the recession. But 179D has not yet proved to be a meaningful incentive for energy efficient upgrades to retrofit existing buildings.

- ***Why does S. 3591place more focus to improve energy efficiency in existing buildings?***
  The bill's focus to encourage greater efficiency in existing structures is sound policy, because up to 80% of the buildings standing today will still be here in 2050. Current energy codes are already making new construction significantly more efficient anyway, and a boost is needed for older structures. S. 3591 would spur *deep whole-building* retrofits of existing structures – to encourage more projects like the landmark upgrade at the Empire State Building, which is under a contract to lower energy consumption by almost 40%. (The ESB, incidentally, could not qualify for a 179D deduction under the law's current structure.)

- ***How does S. 3591 encourage existing building retrofits?***
  S. 3591 includes a "performance-based" component to reward retrofits that produce actual and verified energy savings when existing buildings lower utility consumption. Also, S. 3591 scales the tax deduction so that incentive amounts increase with greater energy savings. In this manner the bill encourages ambitious projects, while also rewarding projects that achieve meaningful yet more moderate levels of energy savings.

- ***How does S. 3591encourage REITs to commit to efficiency retrofits?***
  Entities like real estate investment trusts (REITs) and limited liability partnerships (LLPs) have no or minimal tax liability, so tax deductions are of little use to them. S. 3591 would reform current provisions which permit "allocation" of the tax deduction and allow REITs, LLPs, and other real estate holding structures with minimal tax appetite to also allocate the incentive to their contractors, engineers, lenders, and other parties responsible for retrofit projects.

- ***What's the jobs creation impact of S. 3591's reforms to the 179D deduction?***
  An analysis by the Natural Resources Defense Council, The Real Estate Roundtable, and the U.S. Green Building Council reports that over 77,000 jobs would be created if 179D is amended with S. 3591's reforms, to encourage more existing building retrofit projects.