The Real Estate Roundtable

Data Centers

Energy

Summary

Congressional scrutiny of data centers and AI is likely to continue into the next Congress and the 2028 presidential campaign, driven by rising utility bills, job displacement concerns, and risks posed by autonomous AI agents.

Not every data center or AI policy affects commercial real estate, but some warrant RER's engagement. Proposals that single out data centers for disproportionate regulation or taxation could establish precedents that might eventually extend to other CRE asset classes and building types.

RER evaluates data center policies against the objectives below, to protect commercial real estate interests while recognizing legitimate energy, infrastructure, and community concerns.

Recommendations

- **Fair allocation of infrastructure and energy costs.** Data centers should bear a fair and reasonable share of energy and other costs attributable to their construction and operations. Cost allocations and impact fees should be proportionate and tied to demonstrable impacts.
    - The Ratepayer Protection Act (H.R. 9340) would direct state utility regulators to consider standards ensuring that large data centers pay incremental electricity infrastructure costs. RER supports the bill's underlying principles, provided any resulting costs are allocated proportionately to a data center's actual impacts on the grid, water supplies, and other infrastructure.
- **Ensure fair and equitable tax treatment.** RER opposes discriminatory tax policies that single out data centers for unfavorable treatment relative to other commercial real estate asset classes.
    - Senate Finance Committee Ranking Member Ron Wyden's (D-OR) Oct. 23 draft would impose an excise tax on operators; deny bonus depreciation, Opportunity Zone incentives, and R&D tax credits; and treat data center income received by private REITs as "bad income." RER is concerned that excluding data centers from otherwise available tax incentives is discriminatory and could discourage real estate investment and development.
- **Promote grid reliability and increase energy supply.** RER supports expanding electricity generation and transmission capacity and streamlining federal permitting.
    - RER endorses the American Affordability and Jobs Act (S. 5653), which would streamline reviews, facilitate transmission construction and require data centers to bear specified electricity infrastructure costs.
    - RER is examining the Grid Resiliency Tax Credit Act (S. 5453), providing a 30% investment tax credit for qualifying transmission projects and grid-enhancing technologies, and policies addressing the shortage of electricity transformers.
- **Regulations must follow ownership vs. operational control.** Regulatory compliance obligations must be assigned to the entities controlling the activities being regulated. Policymakers must avoid burdening owners/landlords with responsibilities properly borne by tenants/operators, and vice versa. RER's September comments to the North American Electric Reliability Corp. (NERC) call for clear compliance responsibilities for data center owners distinct from operators—including utility data sharing, interconnection requirements and "ride through" during temporary power fluctuations.
- **Transparency in energy and water use.** RER supports reasonable transparency and reporting requirements. Reporting obligations should rest with entities that control or have access to energy and water consumption data. Where owners must report facility-wide usage, policies should require tenants and operators to provide accurate, timely information necessary for compliance. Requirements should be standardized and use ENERGY STAR Portfolio Manager.