

LOCAL GOVERNMENT

Energy Conservation and Building Codes

HB 08-1270 (Enacted)

*Common Interest Communities
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SB 08-117 (Enacted)

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*Common Interest Communities
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*Common Interest Communities
Allow Energy Efficiency Measures*

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HB 08-1083 (Enacted)

*Mineral Revenue Local Govt
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HB 08-1084 (Enacted)

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Special Districts

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*Audit Special District Unissued
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HB 08-1259 (Postponed Indefinitely)

Special Districts

SB 08-015 (Enacted)

Cemetery District Moneys

Urban Renewal Authorities / Downtown Development Authorities

SB 08-094 (*Postponed Indefinitely*)
*Urban Renewal & Community
Development*

SB 08-103 (*Postponed Indefinitely*)
*Sharing Tax Increment Funding
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SB 08-158 (*Enacted*)
*Include County Land In Urban
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SB 08-170 (*Enacted*)
*Tax Increment Financing &
Downtown Development
Authorities*

Energy Conservation and Building Codes

The General Assembly passed several bills to improve the energy efficiency of buildings. **Senate Bill 08-117** prohibits municipalities and counties from charging more for a building permit to install a solar energy device than the actual cost incurred in issuing the permit. The bill places a \$500 limit on the maximum amount that can be charged for such permit for residential applications and places a \$1,000 limit on the maximum amount that can be charged for non-residential applications.

Current law exempts some state-assisted facilities (facilities designed, constructed, or renovated using state funds) from energy efficiency requirements. **Senate Bill 08-147** repeals this exemption and places energy efficiency requirements on state-assisted facilities for low-income housing projects and facilities constructed with severance tax revenue. According to the bill, the Department of Local Affairs will be required to ensure that facilities constructed with either low-income housing grant monies or severance tax direct distribution funds meet the life-cycle cost analysis and high performance certification criteria currently in place for other state-assisted facilities. The bill also authorizes the Department of Personnel and Administration to rely on any national or locally appropriate fuel escalating methodology approved by the department in performing life-cycle cost analyses. Under current law, state agencies are required to ensure that life-cycle cost analyses and energy conservation practices are employed in the design and construction of new or renovated major state-assisted facilities.

Senate Bill 08-184 creates the Colorado Clean Energy Finance Program to provide below market-rate loans of up to \$12,500 to homeowners to finance home energy efficiency improvements and renewable energy projects. The loans may be issued by public lender, such as a county, municipality, or other public entity, as well as private lenders. The bill requires the Governor's Energy Office to oversee the Colorado Clean Energy Finance Program and select a program administrator to market the loan program, recruit contractors, and measure energy improvements financed by the loans. The state treasurer is also authorized to invest up to \$30 million of state moneys in securities between FY 2008-09 and FY 2010-11 for the purpose of funding the loans.

The bill also creates the Rural Clean Energy Project Finance Program to fund biomass, geothermal energy, solar energy, small hydroelectricity, wind energy, and hydrogen generation facilities up to 50 megawatts and related transmission facilities. Counties are authorized by the bill to finance such projects by issuing tax-exempt private activity bonds of at least \$1 million on behalf of the project applicant. The bonds are to be repaid solely by the applicant's revenue. Eligible applicants include an individual property owner or group of property owners.

The Colorado Common Interest Ownership Act currently has provisions that prohibit limits energy efficiency measures in homeowner association covenants and deeds. **House Bill 08-1270** extends the existing prohibition on covenants and deed restrictions to include other energy efficiency measures such as: wind-electric generators, shade structures, shutters, attic fans, evaporative coolers, energy-efficient outdoor lighting devices, and retractable clotheslines.

Fire Districts, Volunteer Firefighters, and Fire and Police Pensions

Several bills dealt with volunteer firefighters and emergency responder personnel. One bill dealt with firefighter and police pensions.

Two bills addressed benefits for volunteer firefighters and emergency responder personnel. **House Bill 08-1334** creates the "Volunteer Health Insurance Act." The Act allows the governing body of an emergency service provider, such as a fire protection district or emergency service district, to offer health care insurance to volunteers. Current law allows governing bodies to offer health insurance only to employees who work a certain number of hours per week. In making available health care insurance to volunteers, the bill recognizes that volunteer firefighters and emergency responders engage in dangerous work for which, under current law, they have no health insurance benefits should they be injured. Similarly, **House Bill 08-1315** would have created the "Volunteer Emergency Medical Technician Pension Act" to create a pension plan for volunteer Emergency Medical Technicians (EMTs). Under current law, some EMTs are paid for their services, but volunteers are not and thus have no pension benefit (the state's volunteer firefighters do have a pension plan that is partially funded by state contributions). The bill specified the duties of boards of trustees that were authorized to set-up, administer, and manage the pension funds, and allowed a governmental entity to ask the voters to approve an increase in the mill levy to fund the pension fund. The fund would also have received revenue from a fee imposed on local governments that applied for a state contribution, and from taxes on premiums. The bill was postponed indefinitely by the House Appropriations Committee.

Volunteer firefighters cannot be fired for leaving the workplace to respond to an emergency call under **Senate Bill 08-116**. Prior to the bill's passage, volunteer firefighters could not be fired for being absent from work in order to respond to an emergency call. However, the law was silent on whether the employee could leave work to respond to an emergency fire call. The bill requires that in order for volunteer firefighters to leave the job without punishment, the employee must be non-essential to daily operations, the fire chief must notify the employer of the employee's status as a volunteer firefighter, the emergency must be within the response area of the volunteer's fire department, the emergency must be of such magnitude to require all personnel to respond. The fire chief must also supply the employee's employer with a statement verifying the time, date, and duration of the emergency response.

The Police Officer's and Firefighter's Pension Reform Commission recommended **House Bill 08-1070** that allows the commission's board to make a redetermination of benefits, or cost of living adjustment. In deciding whether to award the adjustment of benefits, the board is directed to consider the funding level of the plan, the cost of the increase, and whether the increase creates an adverse actuarial impact on the plan's ability to award future benefits. The bill also contains a formula by which such benefits are capped.

Finally, **Senate Bill 08-039** requires the Division of Fire Safety in the Office of Preparedness, Security, and Fire Safety, Department of Public Safety, to establish a pilot program to offer courses to train fire protection districts directors whose districts include wild land-urban interface areas. Wild land-urban interface areas exist where a certain number of homes are in the vicinity of contiguous vegetation. The bill directs that the courses include, but not be limited to, instruction on strategic planning and community outreach on wild land-urban interface issues. This training is intended to provide training to directors because of the turnover on district boards, and the continuing need to provide training on wild land-urban interface fire safety for these new directors. The bill also establishes the Wild Land-Urban Interface Training Fund to fund the pilot program and the Wild Land-Urban Interface Training Advisory Board for the purpose of advising the division on the content of the courses offered and the implementation of the pilot program.

Homeowner Associations

The Colorado Common Interest Ownership Act outlines provisions for the operation and management of homeowner associations. **House Bill 08-1135** makes amendments to the act as follows:

- homeowner associations are prohibited from prohibiting reasonable modifications to a unit that are necessary to allow an individual with disabilities the full use and enjoyment of the unit as provided for in the federal Fair Housing Act of 1968; and
- homeowner associations are prohibited from imposing fines for alleged violations unless the association has adopted a written policy governing the imposition of fines, and unless the policy includes a fact finding process to determine whether the alleged violation occurred and who should be held responsible for the violation.

The bill also encourages homeowner associations and unit owners to agree to engage in alternative dispute resolution in order to resolve disputes. Under current law, these parties are encouraged to make use of mediation and arbitration to resolve disputes. All of these methods of resolving disputes are recommended as an alternative to court litigation.

The Colorado Common Interest Ownership Act currently has provisions that prohibit certain limits on energy efficiency measures in homeowner association covenants and deeds. **House Bill 08-1270** extends the existing prohibition on covenants and deed restrictions to include other energy efficiency measures such as: wind-electric generators, shade structures, shutters, attic fans, evaporative coolers, energy-efficient outdoor lighting devices, and retractable clotheslines.

Local Taxes and Tax Revenues

Current law limits the total combined sales and use tax rate levied by the state, statutory municipalities, and counties to 6.91 percent. The state sales and use tax is 2.9 percent and current law entitles counties to implement a sales tax up to 1 percent that can create a combined tax rate above the limit. Several exemptions from the limit have been enacted into law, such as additional county sales taxes for public safety improvements, mental health care services, and mass transit. Additionally, the limit does not apply to sales taxes levied by special districts, local marketing districts, and home rule governments which have jurisdiction over their own sales tax policies.

Therefore, a total sales tax rate above the 6.91 percent cap is not uncommon with the inclusion of a tax rate from a home rule government and/or special district. However, the tax rate from exempt entities is counted in the total rate for purposes of the limit and non-home rule jurisdictions are unable to raise tax rates above the cap without specific statutory authority. **Senate Bill 08-128**, eliminates this cap for statutory cities and counties. Any sales and use tax rate increase must be approved by the voters of the municipality, county, or the state.

Property and Land Use

The General Assembly considered several bills concerning local governments and property and land use. Specifically, the legislation addressed: manufactured homes, notification of municipal incorporation, rent control, foreclosures, and land use considerations involving transportation and water supply plans.

Manufactured Homes. Any manufactured home title application that is submitted to an authorized agent must be accompanied by a declaration that contains information to assist the county assessor in determining the value of real property. **HB 08-1260**, requires that any manufactured home title application that is submitted to an authorized agent be accompanied by a declaration that contains information to assist the county assessor in determining the value of real property. Certain documents related to an application for a certificate of title for a manufactured home must be filed and recorded by a county clerk and recorder. Specifically, the bill requires new manufactured home certificates such as a certificate of permanent location, a certificate of removal, and a certificate of destruction to be filed and recorded by a county clerk and recorder. The bill requires the property tax administrator in the Department of Local Affairs to establish the form of the certificates that must include a written declaration that the statements contained in the document are made truthfully under the penalties of second degree perjury. Also, the bill states that the authorized agent or clerk and recorder shall be paid fees, in addition to fees required under current law, for the filing of the additional documents in the office of the county clerk and recorder. Finally, the bill requires each county assessor to maintain a data bank consisting of information derived from the declarations filed pursuant to the bill. The bill was signed into law by the Governor on April 14th, 2008, and takes effect July 1, 2008.

The Colorado Division of Housing, in the Department of Local Affairs, inspects factory built (modular) housing, commercial structures, and manufactured homes to ensure the Colorado safety standards are being met for the health and safety of residents who purchase the units. **House Bill 08-1319**, requires all occupied manufactured structures to bear an insignia of approval issued by the division effective March 1, 2009.

The bill also requires that the Division of Housing promulgate rules for training and testing installers of manufactured structures. Specifically, installers of manufactured structures must:

- provide the division written evidence of 12 months of installation experience;
- complete 8 hours of division-approved installation education;
- pass a division-approved installation test; and
- carry liability insurance of at least \$1.0 million.

Finally, beginning July 1, 2008, the bill requires new independent contractors who perform inspections of the installation of manufactured structures to pass a division-approved installation test. Beginning in 2009, independent contractors must also complete either 12 hours of division-approved

education and 12 hours of international code council education every 3 calendar years or 24 hours of division-approved education every 3 calendar years. The bill was signed by the Governor on June 2, 2008.

Land use requirements. Under current law, inhabitants of an area outside the limits of a municipality that desire to be organized into a neighboring city or town they can file a petition for incorporation into a city or town with the district court of the county. Petitions for municipal incorporation of an area that contains less than 2,500 registered electors will have additional requirements, following the passage of **House Bill 08-1008**. Any petition for incorporation must be mailed to each property owner within the unincorporated area according to the contact records of the county assessor's office and each notice must include the name, address, and telephone number of a contact person that can provide information on the petition to the public, the case number of the civil action concerning the petition, and the district court in which the petition is filed. The notice must also inform property owners that they can request a copy of the petition with the payment of a fee.

Counties are now able to request a transportation plan from applicants requesting approval for a development of a group home for the aged or at-risk adults. **Senate Bill 08-034** permits, but does not require, counties to request that a developer submit a transportation plan showing how the facility operators intend to meet the transportation needs of the facility residents. The transportation plan itself may not constitute grounds for denying the application.

House Bill 08-1141 bill requires that building permit applications for developments of more than 50 single-family equivalents include specific evidence of an adequate water supply. An adequate water supply is defined as one that is sufficient for the proposed development through build-out, in terms of quality, quantity, dependability, and availability. The local government is required to determine if an applicant has an adequate water supply based on a review of application documents. A local government may also request any other information or analyses needed to determine whether the water supply for the proposed development is adequate, including comments from the state engineer on a report or letter required with an application for a development permit. Also, if a development has a water supply plan that meets specified criteria, the authorizing local government can forgo the report or letter.

Rent and Landlords. Under currently law, no county or municipality may enact any ordinance or resolution to control rent on private residential property. **House Bill 08-1140** would have repealed the current statutory provision and allowed local governments to enact an ordinance or resolution to control rent on private residential property. The bill was postponed indefinitely.

Foreclosures. At least 30 days prior to filing a notice of election and demand with a public trustee, and at least 30 days after default, **House Bill 08-1402** requires a lender to mail a notice to the debtor containing the telephone number of the Colorado Foreclosure Hotline and the direct telephone number of the loss mitigation department. The bill also appropriates \$100,000 to the Foreclosure Prevention Grant Fund to be used by the Division of Housing, Department of Local Affairs, to make a grants for the sole purpose of providing outreach and notice of foreclosure prevention assistance to persons in danger of foreclosure and to communities with high foreclosure rates. Grants will be awarded based on criteria established by the division and, beginning January 1, 2009, the division will annually report receipts and expenditures from the fund, as well as grant award result to the House Business Affairs and Labor Committee and to the Senate Business, Labor, and Technology Committee. Remaining monies in the grant fund will revert to the General Fund on June 30, 2010.

House Bill 08-1365 is expected to reduce the filing fees collected by the courts by allowing a time share association to join multiple defendants in a single filing when foreclosing on an assessment lien.

Mineral Impact Revenue to Local Governments

Two bills were recommended by the Interim Committee to Study the Allocation of Severance Tax and Federal Mineral Lease Revenues to study the distribution formulas for severance tax revenues, federal mineral lease revenues, and the Impact Assistance Tax Credit to local communities impacted by mineral development.

The Impact Assistance Tax Credit that is available to communities impacted by mineral development will be studied by the Energy Impact Advisory Committee and other stakeholders. The Energy Impact Advisory Committee approves grant dollars to local government for impacts connected to energy and mineral extraction. **House Bill 08-1084** requires representatives of the Departments of Local Affairs, Natural Resources, and Revenue to work with members of the Energy Impact Advisory Committee and other stakeholders to develop and recommend legislation regarding ways to improve the existing Impact Assistance Tax Credit to help address the needs of local communities impacted by mineral development. This group is required to recommend legislation to the House and Senate Agriculture Committees no later than January 31, 2009.

Currently, allocation of severance tax revenue and federal mineral lease revenues to local governments are based solely on resident employees of the energy industry, and is done on a facility-by-facility basis. **House Bill 08-1083** modifies the formula for the direct distribution of severance tax and the formula used to allocate federal mineral lease revenue to local governments. The bill also makes changes to the employee residence reporting process used to calculate the direct distribution of severance tax revenue to local governments, changes the composition of the Energy Impact Assistance Advisory Committee, and requires the Department of Local Affairs (DOLA) to submit a detailed report accounting for the distributions from the mineral leasing fund and the local government severance tax fund to local governments.

This bill changes the allocation formula to one based on weighted measures of the following three factors:

- the proportion of industry employees within a given county to the total number of industry employees residing in the state (50 percent);
- the proportion of mine and well permits issued within a given county to the total number of such permits issued within the state (25 percent); and
- the proportion of the overall mineral production within the county to the overall mineral production within the state (25 percent).

Beginning in FY 2009-10, these three factors will each be weighted thirty percent, and the executive director of the Department of Local Affairs, in consultation with the Energy Impact Assistance Advisory Committee will establish guidelines and factor(s) to determine how the remaining ten percent will be weighted.

The bill also requires that moneys be distributed to each county based upon resident employees of the energy industry and the proportion of county population and road miles in unincorporated areas, no later than August 31 of each year. The bill makes changes to the employee

residence reporting process used to calculate the direct distribution of severance tax revenue to local governments. Specifically, the bill:

- requires the employee residence that report to the Department of Revenue must also file a report with DOLA;
- clarifies that all parties that register exempt production, withhold income from mineral interest owners, or file a declaration of expected income over \$1,000, must file an employee residence report;
- requires that the form be sent by the Department of Revenue to every producer 90 days before the end of each fiscal year; and
- establishes procedures and consequences for a party that fails to file a report.

The bill also changes the composition of the Energy Impact Assistance Advisory Committee within DOLA, by adding the executive director of the Department of Public Health and Environment and two additional residents of areas impacted by mineral resource development to the committee. Following the passage of House Bill 08-1083, the Energy Impact Assistance Advisory Committee will be comprised of 12 members. The committee is required by the bill to make recommendations to the executive director of DOLA regarding the discretionary distribution of severance tax and federal mineral lease moneys, giving priority to impacted areas. Reporting requirements for DOLA are also addressed by the bill, which requires the department to submit a copy of a detailed report accounting for the distributions of all funds to local governments from the mineral leasing fund and the local government severance tax fund to the State Auditor.

Special Districts

The Legislature considered legislation that addressed several different issues concerning special districts, including: district boundaries, district elections, annual reporting requirements, and cemetery district revenue.

Under current law, applicable local governments may ask special districts to submit an annual report for the first five years of the special district and may request a five-year report thereafter. These annual reports provide detailed information on debt issuance and authorization, and whether a special district is meeting the provisions of its service plan, and is able to meet its financial obligations. **House Bill 08-1125** requires a special district to submit an annual report on the amount of authorized, but unissued, debt to the local government that approved its formation. Districts without such debt may apply for exemption from the audit.

Under current law, cemetery districts are the only special districts that are required to deposit tax revenue with the county treasurer of the county where the cemetery is located. However, some cemetery districts cross county boundaries, which requires the district to maintain accounts with both counties. **Senate Bill 08-015** authorizes cemetery districts to select an alternative custodian of revenue with a financial institution of their choosing, instead of the county treasurer.

House Bill 08-1259 would have changed statutory provisions regarding services outside the district boundary, the annual reporting requirements, and special district elections. Current law allows special districts to provide services, outside the boundary to extraterritorial customers according to a district's service plan. Also, boards of county commissioners are currently allowed to request a copy of a special district's annual report once each year. The report must be filed with the board of county commissioners, any municipality in which the special district is wholly or

partially located, the Division of Local Government, and the State Auditor. The bill would have required all special districts to file the annual report within 90 days after the end of its fiscal year. The bill would have also required special districts to maintain and obtain a list of eligible voters who have applied for mail-in voter status, and special districts to send voter information cards to each household of eligible voters at least 15 days prior to a special election. The bill was postponed indefinitely.

Urban Renewal Authorities / Downtown Development Authorities

The General Assembly considered several bills on urban renewal authorities and community development. Under current urban renewal law, a municipality's urban renewal plan can not include portions of unincorporated county lands that are contiguous to the urban renewal area. **Senate Bill 08-158**, provide that a municipality's urban renewal plan, project, or area may include portions of unincorporated county lands that are contiguous to an urban renewal area located within the municipality's borders. Before the territory is included in such plan, the board of county commissioners with jurisdiction over the unincorporated territory, and each real property owner within the area, must first give consent. The bill specifies the procedures for obtaining such approval and allows the parties to enter into an intergovernmental agreement to accomplish the goal.

Tax increment financing (TIF) is a method by which redevelopment projects targeted at improving blighted areas are funded. Municipalities that have formed downtown development authorities (DDAs) to collect TIF revenues for a period not to exceed thirty years. Under **Senate Bill 08-170**, the period of time during which TIF revenues are collected by a DDA is extended. The bill allows a municipality to adopt an ordinance that extends the period to collect TIF revenues, if it does so within the last ten years of an initial 30-year revenue collection period. The extension can be for 20 years, resulting in a total of a 50-year revenue collection period. Half of such revenues must be deposited into the DDAs fund, and the other half must be paid to other taxing entities within the district.

Urban Renewal Authorities would have been required to make payments to other public bodies that share in revenues collected in property taxes under **Senate Bill 08-103**. Counties, school districts, and special districts would have shared in the revenues up to a total of twenty-five percent of such revenues. This amount was to have been annually divided proportionately among the entities that share in the property tax that is levied within the authority's boundaries. The bill was postponed indefinitely.

Under **Senate Bill 08-094**, municipalities would have been allowed to create community development areas to undertake community development projects. Such projects were intended to create ongoing employment opportunities, strengthen the local tax base, induce private business to locate in or remain in the municipality, promote the use of renewable energy or clean energy, mitigate environmental contamination of buildings or property, provide affordable housing, assist in the development or transit oriented development, and provide regional infrastructure that benefits the municipality as well as the area to be developed or redeveloped. The bill specified requirements for and prohibitions against creating community development areas including a prohibition against acquiring by eminent domain private property to be included in such areas. The bill was postponed indefinitely.