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C O N F I D E N T I A L M E M O R A N D U M

PRIVILEGED ATTORNEY- CLIENT MEMORANDUM

TO: Sara Graf, Contracts Associate, Governor's Energy Office
Eric Stern, Governor's Energy Office

FROM: Jed Franklin
Assistant Attorney General
State Services Section

RE: Application of House Bill 07-1146 to counties and municipalities

You asked about the circumstances in which a county or municipality is required to adopt and apply the Energy Code referenced in House Bill 07-1146. Counties with building codes are required to adopt and apply the Energy Code to commercial and residential buildings regulated by the county's building code. Municipalities with building codes are required to adopt and apply the Energy Code to all commercial and residential buildings in the municipality regardless of the reach of the municipality's building code.

The memorandum reflects the opinion of the authoring attorney and is not to be construed as an official opinion of the Attorney General.

ANSWER CHART

	Must adopt the Energy Code?	Must apply the Energy Code to Residential buildings?	Must apply the Energy Code to Commercial buildings?
<u>COUNTY</u> Building Code:			
None	NO	NO	NO
Residential Only	YES	YES	NO
Commercial Only	YES	NO	YES
Both Residential and Commercial Codes	YES	YES	YES
<u>MUNICIPAL</u> Building Code:			
None	NO	NO	NO
Residential Only	YES	YES	YES
Commercial Only	YES	YES	YES
Both Residential and Commercial Codes	YES	YES	YES

DISCUSSION

House Bill 07-1146 requires county and municipal building codes to meet certain minimum standards established in the 2003 International Energy Conservation Code by amending C.R.S. §§ 30-28-201, 30-28-211, and 31-15-602, *et. seq.* (2007). “Building Code” is defined as “regulations related to energy performance, electrical systems, mechanical systems, plumbing systems or other elements of residential or commercial buildings”. *See* Colo. Rev. Stat. §§ 30-28-211(2)(a) and 31-15-602(2)(a) (2007). This memo refers to C.R.S. §§ 30-28-

201(3) and 30-28-211(3)-(5)(a) as the “County Act” and C.R.S. §§ 31-15-602(3)-(5)(a) as the “Municipal Act”. The 2003 International Energy Conservation Code is referred to as the “Energy Code”, as defined in C.R.S. 30-28-211(2)(b) and 31-15-602(2)(b) (2007).¹

Counties: A county with a building code must adopt and apply the Energy Code to new construction of, renovations, and additions to commercial and residential buildings to which the building code applies. The County Act requires a county that has enacted a building code, or that later enacts a building code, to adopt the Energy Code. Colo. Rev. Stat. § 30-28-201(3) (2007). A county with a building code must apply the Energy Code to new construction of, renovations, and additions to commercial and residential buildings. Id. However, the County Act limits the Energy Code’s application to only those types of buildings to which the building code applies. Id. For example, a county with a building code regulating only commercial buildings is required to adopt and apply the Energy Code to only commercial buildings. A county with a comprehensive building code must adopt and apply the Energy Code to all commercial and residential buildings. Counties without building codes are not subject to the requirements of § 211(3).

A county that adopts the Energy Code must apply it to any commercial or residential building that its building code applies to for which a building permit application is received after adoption of the Energy Code. Colo. Rev. Stat. § 30-28-211(4)-(5)(a) (2007). Under § 211(4), a county with an Energy Code must apply it to all commercial and residential buildings for which the county receives a building permit application. However, buildings that are exempt from the

¹ When using statutes in a sentence, this memo will henceforth refer to Colorado Revised Statutes cites using only the section number and will omit title and article numbers. For example, C.R.S. § 30-28-211(3) is referred to as § 211(3). All statutory references are from the 2007 edition of the Colorado Revised Statutes.

county's building code are exempt from the Energy Code's application. Colo. Rev. Stat. § 30-28-211(5)(a) (2007). Thus, a county that exempts residential buildings from its building code and receives a building permit application for a residential building is not required to apply the Energy Code to that building under § 211(5)(a).

Municipalities: The Municipal Act requires municipalities to treat commercial and residential buildings in a similar manner as the County Act, with one difference. Colo. Rev. Stat. §§ 31-15-602(3)-(5)(a) (2007). Significantly, § 602(3) is not limited to only those buildings to which a municipality's building code applies. Rather, the Municipal Act applies to new construction of, renovations, and additions to all commercial and residential buildings in a municipality that has enacted a building code, whether such code applies to residential or commercial buildings, or both. Id. For example, a municipality with a building code that regulates only commercial buildings must adopt and apply the Energy Code to all residential buildings and commercial buildings. A municipality without a building code is not required to enact the Energy Code under § 602(3).

CONCLUSION

Counties with building codes are required to adopt and apply the Energy Code to commercial and residential buildings regulated by the county's building code. Municipalities with building codes are required to adopt and apply the Energy Code to all commercial and residential buildings in the municipality regardless of the reach of the municipality's building code.