

LOCAL GOVERNMENT

County Governance		
SB 11-110 (Enacted) <i>County Open Burning Slash Permit Program</i>	HB 11-1087 (Enacted) <i>Pest Control Reimbursement Program</i>	HB 11-1098 (Postponed Indefinitely) <i>Publish County Fiscal Information On-line</i>
HB 11-1218 (Enacted) <i>County Creation Of Federal Mineral Lease Districts</i>		
Fire and Police Pensions / Wildfire Preparedness		
SB 11-221 (Enacted) <i>Old Hire FPPA Plans State Contributions</i>	SB 11-238 (Enacted) <i>Extend Wildfire Preparedness Funding</i>	HB 11-1317 (Enacted) <i>Intergovernmental Cooperation Wildland Fire Mitigation</i>
Homeowners' Associations		
SB 11-253 (Postponed Indefinitely) <i>HOA Registration Cleanup Applicability</i>	HB 11-1124 (Enacted) <i>Conflicts Of Interest HOA Executive Board Members</i>	HB 11-1197 (Postponed Indefinitely) <i>HOA Lien Foreclose Enforcement</i>
Local Taxes / Tax Revenues		
SB 11-178 (Enacted) <i>Manner of Sales Tax Exemption</i>	HB 11-1042 (Enacted) <i>Class Of Residential Land When Residential Improvement Is Removed</i>	HB 11-1059 (Postponed Indefinitely) <i>Restrict Local Government Accident Fees</i>
HB 11-1109 (Enacted) <i>Telecommunication Equipment Local Sales Tax Exemption</i>	HB 11-1146 (Enacted) <i>Property Tax Exemption for Agricultural Lands</i>	
Renewable Energy and Property		
HB 11-1160 (Enacted) <i>Governor's Energy Office Green Building Incentive Program</i>	HB 11-1199 (Enacted) <i>Limiting Government Fees on Installation Of Solar Energy Devices</i>	
Special Districts		
HB 11-1031 (Enacted) <i>Creative Districts</i>		

County Governance

The General Assembly considered several bills addressing county governance during the 2011 legislative session. Three bills — one concerning payment in lieu of taxes, one concerning burning permits, and one concerning pest control operations — were enacted, while a fourth bill on expenditure reports was postponed indefinitely.

Payments in Lieu of Taxes. Payments in Lieu of Taxes (PILT payments) are federal payments made from the Department of the Interior to local governments that help offset losses to a local government property tax base from the existence of federal lands within county borders. PILT payments may be used to fund services such as firefighting, police protection, and public school and road construction. **House Bill 11-1218** allows counties to create a Federal Mineral Lease district for purposes of receiving moneys distributed to the county by the Department of Local Affairs from the Local Government Mineral Impact Fund. The bill specifies requirements for the creation of the district, criteria for establishing the district's board of directors, and the board's powers and duties.

Burning permits. Large numbers of trees in Colorado have been killed by recent beetle infestations. To reduce the threat of wildfires in these impacted areas, local communities use logging and other methods to mitigate fuels that create forest fires. These methods create large piles of limbs, branches, and stems, called *slash*, that must be burned or otherwise disposed. **Senate Bill 11-110** requires counties with substantial forested area to develop an open burning permit system for unincorporated areas of the county that addresses the disposal of slash. The bill requires affected county governments to collaborate with local jurisdictions, sheriffs, and other agencies to develop an education plan concerning slash pile burning. Counties developing a permit system must consider existing laws and scientific and applied knowledge of safe burning conditions, and include mechanisms to notify neighbors and individuals with respiratory conditions of permitted burns. Counties with an existing open burning permit system are exempt from the bill's requirements until the board of county commissioners alters the existing permit system. The bill also exempts prescribed burns that follow federal and state guidelines and preserves the existing rights of agricultural producers to conduct burning on their property.

County pest control. **House Bill 11-1087** modifies state statutes addressing how county governments finance pest control operations. Specifically, the bill allows private landowners to enter into a cooperative agreement with counties for pest control services at prevailing rates, and requires private land owners to reimburse a county for rodent control services that are provided under a cooperative agreement. The bill also modifies the appeals process for costs assessed to private parties and removes statutory caps on the amount of private reimbursement and the annual amount counties may spend on rodent control.

Expenditure reports. Currently, a board of county commissioners is required, with certain exceptions, to publish an expenditure report each month and a financial statement twice a year. The reports and statements are required to be published in at least one newspaper in the county. **House Bill 11-1098**, which was postponed indefinitely, would have allowed the board to publish the expenditure report and the financial statement on a website maintained by the county rather than publish them in a legal newspaper.

Fire and Police Pensions and Wildfire Preparedness

The General Assembly considered bills addressing the pensions of firefighters and police officers, as well as wildfire preparedness during the 2011 legislative session.

Fire and police pensions bills. Firefighter and police officer pensions are governed by state and federal law, but their funding comes primarily from contributions by employees and local government employers. While some plans are administered locally, the state currently provides assistance to eight old hire plans under the management of the Fire and Police Pension Association (FPPA), due to past state legislation enacted to reform local pension plans for police officers and firefighters hired prior to April 8, 1978 (old hires). The purpose of the reform was to ensure that local pension plans were actuarially sound, and included state financial assistance conditioned on increases in both employer and employee contributions.

Under current law, the state is obligated to pay part of the unfunded liability of old hire pension plans. Payments are made annually from the General Fund Exempt Account to the FPPA. Senate Bill 09-227 suspended state contribution to the FPPA for old hire pension plans for three years, from FY 2008-09 to FY 2010-11. The bill also reduced the amount appropriated from the state General Fund for FY 2008-09 through FY 2010-11 by \$25,321,079, and scheduled the expenditures to resume in FY 2011-12 and continue through FY 2014-15 or until the plans are fully funded.

Senate Bill 11-221 makes several technical changes to current law addressing the state's contributions toward the unfunded liability of old hire pension plans affiliated with the FPPA. Specifically, the bill:

- extends the date for all unfunded liabilities of the state to be eliminated to June 30, 2019;
- requires updated annual actuarial studies be conducted through April 30, 2019, or until all state-assisted old hire pension plans are fully funded, whichever comes first;
- reduces the amount of the state's annual contribution for FY 2011-12, payable on April 30, 2012, by \$20 million, to \$5.3 million;
- reduces the amount of the state's annual contribution for FY 2012-13, payable on April 30, 2013, by \$15.3 million, to \$10 million; and
- requires the state to fund the unfunded liability created as a result of the reductions in state contributions under this bill by April 30, 2019.

Wildfire Preparedness Fund. The Wildlife Preparedness Fund was created in 2006 by Senate Bill 06-096, which requires funding to be transferred through FY 2010-11. According to state law, the governor must access and designate moneys in the Wildfire Preparedness Fund by an executive order or proclamation for wildfire preparedness activities in the state. **Senate Bill 11-238** extends the annual \$3.25 million transfer to the Wildfire Preparedness Fund of federal mineral lease revenues by the Department of Local Affairs from the Local Government Impact Fund, for two years beginning on July 1, 2012. The funding is used by the Colorado State Forest Service for wildfire preparedness activities including funding for firefighting resources, agreements, and plans. The bill also requires the Colorado State Forest Service to annually report on the use of these revenues to the Department of Local Affairs, the Office of State Planning and Budgeting, and the General Assembly.

In 2009, the general assembly enacted statutory provisions requiring each county or municipality that owns any land area located either entirely or partially inside the boundaries of another county that contains at least 50 percent forest land or land that constitutes a wildland area to enter into an intergovernmental agreement (IGA) by July 1, 2011. **House Bill 11-1317** extends the date by which the local government is obligated to enter into an IGA to July 1, 2012. An IGA would be for the purpose of mitigating forest land or wildland fires affecting the contiguous land

areas between a local government and county. Additionally, parties comprising an IGA must consult with any utility providers that have facilities if the agreements will affect the utility providers.

Homeowners' Associations

The General Assembly considered two bills addressing communities under the Colorado Common Interest Ownership Act (CCIOA).¹ Several provisions in state law address rules of conduct, ethics, and conflicts of interest pertaining to public officials and public employees.

House Bill 11-1124 require a candidate for the board of directors of a special district to disclose whether he or she is a member of an executive board of an HOA, located within the boundaries of the director district for which the candidate is running for office. The bill also requires the policies, procedures, and rules and regulations of an HOA to include:

- a definition or description of the circumstances where a conflict of interest exists;
- procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed to; and whether a board member must recuse himself or herself from discussing or voting on the issue; and
- a process for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

Under current law, a homeowners' association (HOA) can file a lien for past-due assessments and other charges, and the most recent six months' worth of assessments are granted a superpriority status over all other liens, including the mortgage on the unit. **House Bill 11-1197**, which was postponed indefinitely, would have clarified the rights of the HOA in foreclosure proceedings as they pertain to the superpriority portion of the lien granted under CCIOA. Specifically, the bill would have clarified the procedures regarding the priority of liens in foreclosure proceedings within an HOA and the affected transactions between private parties.

House Bill 10-1278 established the HOA information and resource center and required every unit owners' associations to register annually with the Division of Real Estate in the Department of Regulatory Agencies. This bill also required an annual registration fee from each HOA to support the operation of the HOA information and resource center. **Senate Bill 11-253**, which was deemed lost, would have clarified the requirements for registration of an HOA under CCIOA. Specifically, the bill would have codified the legislative intent from House Bill 10-1278 to require every unit owners' association to register annually with the Division of Real Estate.

Local Taxes / Tax Revenues

Property taxes on agricultural lands. Agricultural lands are subject to a lower property tax rate than other types of property, such as commercial properties. House Bill 10-1293 created a nine-member interim task force to study the assessment and classification of agricultural and residential land and propose legislation to ensure that land is valued based on its actual use.

¹Section 38-33.3-101, *et seq.*, C.R.S.

The impetus for House Bill 10-1293 was a concern that some homeowners are claiming an agricultural classification without being a part of a bona fide agricultural operation to obtain a lower property tax bill. The task force submitted a written report to the Local Government and Agriculture committees of the General Assembly that included recommendations that are reflected in **House Bill 11-1146**. The bill affects property taxes starting in property tax year 2012 by amending the definition of "agricultural land" to exclude up to two acres of land associated with residential improvements located on the land unless the residence is "integral to an agricultural operation" conducted on the land. The bill also clarifies that a residential improvement is "integral to an agricultural operation" if the individual occupying it either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or parent, grandparent, sibling, or child of an individual who regularly conducts, supervises, or administers material aspects of the agricultural operation. Additionally, if a district has not obtained voter approval to retain and spend revenue above its TABOR limit, and determines that the bill will cause a net revenue increase that exceeds its TABOR limit, a district may obtain voter approval to retain and spend the additional revenue generated as a result of the bill if voter approval is not obtained, an adjustment to the number of mills levied by the district will be made.

Assessment of residential property. Property classified as residential is assessed at a lower rate than vacant land. In response to recent wildfires in Colorado that destroyed many homes, **House Bill 11-1042** specifies that lands may continue to be assessed at the residential rate when a residential improvement is destroyed, demolished, or relocated as a result of a "natural cause" in the year in which the event occurred plus two subsequent property tax years. Under the act, land may maintain the residential classification for up to five additional property tax years if the county assessor determines that there is evidence that the owner intends to rebuild or locate a residential improvement on the land. A "natural cause" includes fire, explosion, flood, tornado, action of the elements, act of terror, or a similar cause beyond the control of and not caused by the homeowner.

Sales tax exemptions. The General Assembly adopted two bills affecting the authority of local governments to apply sales tax exemptions. **House Bill 11-1109** grants a town, city, or county the authority to exempt from local sales tax the sales of machinery and equipment used directly in the provision of telephone and telegraph service or mobile telecommunications service. Such machinery and equipment would remain subject to the state sales tax. This bill does not affect special districts.

Senate Bill 11-178 expands the means by which a statutory local government (town, city, or county) may adopt a sales tax exemption. Under current law, statutory local governments may only adopt some state sales tax exemptions using the same manner by which the original ordinance was enacted. All existing ordinances were adopted by election. This bill allows adoption of certain sales tax exemptions without an election. Current sales tax exemptions for the following items are affected by the bill:

- machinery or machine tools;
- electricity, coal, wood, gas, fuel oil, or coke;
- food;
- vending machine sales of food;
- sales by a charitable organization;
- farm equipment and farm equipment under lease or contract;
- low-emitting motor vehicles, power sources, or parts used for converting such power sources;

- pesticides;
- wood from salvaged trees killed or infested in Colorado by mountain pine beetles;
- components used in the production of energy from a renewable energy source;
- sales that benefit a Colorado school; and
- sales by an association or organization of parents and teachers of public school students that is a charitable organization.

Emergency service fees. **House Bill 11-1059**, which was postponed indefinitely, would have prohibited local governments from charging a fee to nonresidents of the local government for any costs or expenses incurred for emergency services provided in response to motor vehicle accidents within the boundaries of certain urban communities. The bill included exceptions for ambulance service and hazardous waste cleanup. It would have affected any authority, county, municipality, city and county, district, or other political subdivision of the state.

Renewable Energy and Property

Energy-efficient homes. The General Assembly considered several bills concerning renewable energy and property. **House Bill 11-1160** creates a Green Building Incentive Pilot Program in the Governor's Energy Office (GEO). This program authorizes the GEO to award grants to qualified applicants who are preparing to sell their current homes with energy efficiency ratings below minimum standards and purchase highly efficient new residential construction. Grants will be awarded for the purpose of allowing applicants to make energy efficiency improvements to their current residences to increase their marketability. Under the bill, applicants are required to submit specified documentation related to the energy requirements for both the existing and the new residences to the GEO, as well as closing documents for the new residence. Additionally the GEO is required to maintain a list of qualified contractors able to make the energy efficiency improvements. Implementation of the program and the number of grants awarded are conditional on the availability of unspecified federal funds. The GEO may require additional documentation or information from the qualified home buyer as in order to secure any additional federal funds.

Limits on government fees for solar energy devices. Current law prohibits municipalities and counties from charging a permit fee in excess of \$500 for a residential application or \$1,000 for a nonresidential application to install an active solar energy device or system that generates under 2 megawatts of electricity. However, this local permit fee limit is set to expire on July 1, 2011, which would allow local governments to establish their own fees for solar installations. **House Bill 11-1199** extends this statutory limit on solar device fees to July 1, 2018. Local limits of \$500 for residential and \$1,000 for nonresidential applications are extended. The bill also prohibits any state entity from charging a fee greater than \$500 for a residential application or \$2,000 for a nonresidential application. The bill specifies that fee limits apply to permits, plan review, or other fees, and requires local governments to itemize all fees and taxes assessed for a solar device application.

Special Districts

Creative districts. Under the provisions of Senate Bill 10-158, the Council on the Arts, Office of Film, Television and Media, and Art in Public Places were reorganized as the Division of Creative Industries under the Office of Economic Development and International Trade (OEDIT), in July 2010. The key goals of this new division are to increase access to funding for creative enterprises, expand professional development, and to stimulate support for creative enterprises by local governments.

House Bill 11-1031 provides the authority for local governments to form creative districts, which will be authorized to accept economic development incentives from OEDIT. Creative districts are arts-oriented business clusters intended to promote redevelopment and local entrepreneurship. Local governments seeking creative district certification must apply and report to OEDIT, and the bill specifies the minimum criteria that a local government must satisfy in order to have a district certified by the division, and outlines the process for certification.