

**2009 NAIOP GREEN SERIES**  
***“Going Green to Find Gold in Your  
Existing Building”***  
**The Legalities: The Regulatory  
Environment**



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Location

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## Overview

- General trend is towards more regulation at the federal, state and local levels
- Federal
  - EECBG Grants
  - Waxman-Markey
- State
  - Recent legislation
- Local
  - focus on several Front Range communities

## Federal

- Energy Efficiency and Conservation Block Grants (EECBG)
  - Purpose: funding for cities and counties to:
    - construct energy efficient demonstration projects
    - adopt plans for climate change and sustainability
    - to amend or adopt building and zoning codes for energy
  - American Energy Independence and Security Act - which became Public Law 110-140 on 12/19/2007
  - Funded in American Reinvestment and Recovery Act (ARRA) (aka “Stimulus Bill”) - \$3.2B
  - Modeled on successful HUD CDBG program

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Name	Government Level	Allocation
Colorado	State Energy Office	\$9,593,500
Arvada	City	\$951,900
Aurora	City	\$2,851,300
Boulder	City	\$1,017,800
Broomfield	City	\$516,600
Castle Rock	City	\$174,800
Centennial	City	\$922,900
Colorado Springs	City	\$3,666,100
Commerce City	City	\$185,200
Denver	City	\$6,079,500
Fort Collins	City	\$1,307,900
Gr Junction	City	\$229,800
Greeley	City	\$869,100
Lakewood	City	\$1,326,100
Littleton	City	\$182,500
Longmont	City	\$785,100
Loveland	City	\$606,400
Parker	City	\$172,400
Pueblo	City	\$1,007,000
Thornton	City	\$965,500
Westminster	City	\$952,800

## Federal - continued

- Waxman-Markey American Clean Energy and Security Act of 2009 (H.R. 2454)
  - Four sections:
    - “Clean Energy”
    - “Energy Efficiency”
    - “Global Warming”
    - “Transitioning”

- Establishes national “energy efficiency targets” for buildings
  - Commercial Buildings (% reduction over “baseline”)
    - 30% reduction as of effective date of Act (2009?)
    - 50% reduction as of January 1, 2015
    - +5% additional as of January 1, 2018
    - +5% every three years thereafter through January 1, 2030
  - Note: “baseline” = 2006 IECC for residential, and ASHRAE 90.1-2004 for commercial buildings (same baseline as LEED rating system)
    - IECC applies to multifamily  $\geq 4$  stories; otherwise, AHSRAE 90.1

- Establishes a “National Energy Efficiency Building Code” sufficient to meet the targets
  - deadline – 1 year after target date
    - e.g. 30% reduction code by effective date of Act +1 year, etc.
  - Secretary of Energy may select an existing code as the National Energy Efficiency Building Code
  - Or conduct rulemaking to establish

- Each state must adopt statewide energy efficiency building codes
  - Within 1 year after each national code established
  - In states without a statewide building code (like Colorado), must document that 80% of local governments representing urban population have adopted the national code, or codes that meet or exceed the target
  - May meet requirement by adopting CA Title 24-2009



- Compliance
  - state eligible to receive State Energy and Environment Development Account (SEED) funds
    - for management and accounting for emission allowances
  - local governments eligible to receive “emission allowances”
- Noncompliance
  - state will not receive “emission allowances” pursuant to Act
  - reduction in other federal energy funding

- Retrofit for Energy and Environmental Performance (REEP) Program
  - Secretary shall develop standards (in conjunction with the “Director of Commercial High Performance Green Buildings”)
  - Use existing programs where possible
  - State and local agencies designated to carry out

- Develop rating systems (for commercial buildings: Building Performance Institute)
  - Act specifically requires either reflective or green roofs
- Create materials, resources
- Revolving loan funds (using funds from sale of emission allowances)

- Act limits amount of funds available for commercial building retrofits
  - actual cost of audit, up to \$500
  - \$0.15/SF for energy reductions from 20 - 30%
  - \$0.75/SF for energy reductions from 30 - 40%
  - \$1.60/SF for energy reductions from 40 - 50%
  - \$2.50/SF for energy reductions > 50%
  - Overall cap – 50% actual cost of retrofit

- Additional specific awards available for
  - water
  - environmental improvements
- Indoor Air Quality Minimum Standard
  - ASHRAE 62.1 for ventilation

- Building Energy Performance Labeling Program
  - Develop standards for each building type
  - Encourage use by states and local governments
  - Disclose building label contents in tax, title and other records

## State

- Colorado's response to global warming is, and will be, primarily at the local government level
- Land use is local, by statute and tradition, in Colorado
  - Colorado statutes vest land use and development authority in local governments
  - Local governments resist statewide "top-down" regulation
    - Remember the Growth Wars of 1999 – 2001?
  - Supreme Court has upheld this scheme
- Contrast statewide measures (CA)

## State

- State of Colorado Climate Change Plan
  - [http://www.colorado.gov/energy/in/uploaded\\_pdf/ColoradoClimateActionPlan\\_001.pdf](http://www.colorado.gov/energy/in/uploaded_pdf/ColoradoClimateActionPlan_001.pdf)
  - Goal: reduce GHG 20% by 2012



## State - Legislation

- SB 08-117
  - Prohibits municipalities and counties from charging a fee to install a solar panel that is more than actual costs for reviewing the application, or \$500 residential/\$1,000 commercial, whichever is less



## State - Legislation

- HB 08-1350
  - Allows counties to use Local Improvement Districts (LIDs) and cities to use special improvement districts (SIDs) to provide for energy efficiency retrofits and installation of renewable energy fixtures in new construction
- HB 09-1350
  - Would have created “New Energy Improvement Districts”
  - Killed in House
  - May come back in some form this year

## State - Legislation

- **HB07-1146**
  - Any county or municipality that adopts a building code must also adopt an energy code. The energy code adopted by the municipality or county must be at least as stringent as the most recent version of the International Energy Conservation Code (IECC)
- Colorado is a home rule state; no statewide energy code

## State - Legislation

- Colorado jurisdictions adopting 2006 IECC
  - State – for all state buildings
  - Counties
    - Adams, Arapahoe, Larimer
  - Cities
    - Arvada, Aurora, Basalt, Castle Rock, Centennial, Collbran, Colorado State Buildings, Cortez, Craig, DeBeque, Denver, Durango, Edgewater, Englewood, Fort Lupton, Frisco, Fruita, Golden, Grand Junction, Greeley, Greenwood Village, Hotchkiss, Lakewood, Longmont, Louisville, Mesa County Regional, Palisade, Parker, Salida, Thornton, Westminster

## State - Legislation

- 2006 International Energy and Conservation Code – IECC
  - [www.iccsafe.org](http://www.iccsafe.org)
  - Required Minimum Level of Energy Efficiency In New Residential and Commercial Construction
  - Many cities have adopted 2006 version (see previous list)
- 2009 IECC now available
  - 30% solution not completely adopted
    - [www.thirtypercentsolution.org](http://www.thirtypercentsolution.org)
  - State GEO position: HB 1146 requires 2009 IECC
- Many local governments require compliance with current code for significant renovations

## State - Legislation

- HB 08-1270
  - covenants prohibiting renewable energy facilities void as a matter of public policy
- SJR 09-28
  - Recognition of “Cool Cities” program

## Local

- Overall trend: more green building regulations
- Colorado cities currently amending codes
  - Denver
  - Aurora
  - Lakewood
  - Wheat Ridge

- Colorado local governments with mandatory green building programs in place as of July, 2009
  - Boulder – Green Points Program
    - Oldest and most comprehensive
    - Mandatory for all new construction and significant renovation
    - Recently revised
    - [http://ci.boulder.co.us/index.php?option=com\\_content&task=view&id=208&Itemid=489#BOOK](http://ci.boulder.co.us/index.php?option=com_content&task=view&id=208&Itemid=489#BOOK)
  - Aspen/Pitkin County
    - begun as voluntary, evolves into mandatory
    - [www.newrules.org/environment/climateaspen.html](http://www.newrules.org/environment/climateaspen.html)
  - Carbondale Efficient Building Program
    - [carbondalegov.org](http://carbondalegov.org)
  - Eagle County ECObuild Program
    - [www.eaglecounty.us/commDev/ecobuild.cfm](http://www.eaglecounty.us/commDev/ecobuild.cfm)



- National trend
  - As of 7/1/09, LEED certification codified by legislation, executive orders, resolutions, ordinances, policies and initiatives are found in
    - **43** states
    - **190** localities (**126** cities, **36** counties, and **28** towns)
    - **36** state governments (including the Commonwealth of Puerto Rico)
    - **12** federal agencies or departments
    - public school jurisdictions
    - **39** institutions of higher education across the United States

## Predictions

- General trend – more cities enacting regulations
  - public demand/support
  - EECBG funds
  - ARRA funds
  - Waxman/Markey requirements
- Be prepared
  - “Skate to where the puck is going to be, rather than where it is.”  
– Wayne Gretzky

