



NAIOP 2021 End of Session Report



Colorado's General Assembly officially concluded the 2021 Legislative Session on Tuesday, much to the relief of the business community. The legislature convened on January 13, 2021 for a mere three days, to kick off of the first session of the 73rd General Assembly before quickly recessing against the backdrop of the COVID-19 pandemic and the insurrection at our Nation's Capitol. When they reconvened on February 16, 2021, most lawmakers and staff were vaccinated, safety protocols for conducting the state's business were in place, and limited access to the building was allowed. Mandatory health checks were required for non-legislative staff initially. The session concluded on June 8 after 116 days and a lengthy and bitter debate in the House that stretched into the early evening, 3 hours after the senate had adjourned. Unfortunately, it summarized much of the tone of the session. The 2021 legislative session was one of the most controversial in recent memory. Democrats, who are in their third year in the statehouse majority, ran legislation overhauling everything from healthcare, the tax code, the criminal justice system, and agricultural production to the state's transportation-funding mechanism. From the start of the session, democrats committed to undertaking their most aggressive reform agenda ever. Business overall felt that many of the bills attacked the very industries which ensure that Colorado enjoys economic success. The impacts of 2021 will be

felt for many years. [Click here](#) to link to an article that provides a good summary of the session including many of the most notable bills.

In addition to the priority legislation summarized below, you may [click here](#) to access your legislative bill tracker for detailed information on all bills tracked on your behalf.

HB 21-1083 STATE BOARD ASSESSMENT APPEALS VALUATION ADJUSTMENT

Sponsors: *Rep. Benavidez/Sens. Priola, Zenzinger*

Under current law, when a property owner appeals the valuation of property set by a county board of equalization, the State Board of Assessment Appeals may not increase the valuation. This bill removes this restriction. Despite the significant opposition to this bill, including from the Board of Assessment Appeals, the Governor declined to veto the bill and it became law upon his signature.

<https://leg.colorado.gov/bills/hb21-1083>

Status: Governor signed

Position: Oppose

Effective date: 4/7/21 (upon signature of Governor)

HB 21-1117 LOCAL GOV AUTHORITY PROMOTE AFFORDABLE HOUSING UNITS

Sponsors: *Reps. Lontine, Gonzales-Gutierrez/Sens. Gonzales, Rodriguez*

In 1981, the General Assembly enacted legislation that prohibits counties and municipalities from enacting any ordinance “that would control rent on private residential property or a private residential housing unit.” In 2000, the Colorado Supreme Court prohibited the application of local land use authority for inclusionary zoning for new rental housing development, citing that requiring a set aside for affordable units by the Town of Telluride was a form of “rent control,” which is prohibited by the 1981 state law. Subsequent legislation adopted in 2010 created an exception for new rental developments when developers voluntarily agree to inclusionary zoning. HB 21-1117 clarifies that the state prohibition on local rent control laws is not applicable to local laws that restrict rents on newly constructed or redeveloped housing (also known as inclusionary zoning ordinances), so long as the local regulation provides options to the property owner or land developer and creates alternatives to the construction of new affordable housing on the building site. The bill was amended in the Senate to provide that a local government shall not adopt such an ordinance unless the local government demonstrates that it has taken one or more actions (listed in the bill) to increase the overall number and density of housing units within its jurisdictional boundaries or to promote or create incentives to the construction of affordable housing units. The Governor played a significant role in developing the language for this amendment. [Click here](#) to read his signing statement for HB 21-1117.

<https://leg.colorado.gov/bills/hb21-1117>

Status: Governor signed

Position: Oppose unless amended

Effective date: 9/7/21 (90 days following final adjournment)

HB 21-1121 RESIDENTIAL TENANCY PROCEDURES

Sponsors: *Reps. Jackson, Jodeh/Sen. Gonzales*

As introduced, this bill would have:

- increased the amount of notice landlords must give tenants prior to starting eviction proceedings from 10 to 14 days;
- extended the period for which the summons in a residential eviction action must be issued from 7 to 14 days before the court appearance;

- extended the period for residential evictions after a landlord wins an eviction judgement from 48 hours to 14 days;
- prohibited landlords from increasing rent more than one time in a 12 month period;
- required that notice be personally served to a tenant in the same manner as any other civil procedure, rather than posting notice on the premises or leaving with a family member;
- extended the notice period for nonpayment of rent for a mobile home owner from 10 to 14 days; and
- extended the written notice period for raising rent or terminating a residential tenancy when there is no written agreement between the landlord and tenant from 21 to 60 days.

The bill was significantly amended throughout the legislative process. As amended and ultimately adopted the bill:

- extends the period for residential evictions after a landlord wins an eviction judgement from 48 hours to 10 days;
- prohibits landlords from increasing rent more than one time in a 12 month period; and
- extends the written notice period for raising rent or terminating a residential tenancy when there is no written agreement between the landlord and tenant from 21 to 60 days.

<https://leg.colorado.gov/bills/hb21-1121>

Status: Passed House & Senate

Position: Neutral as amended

Effective date: Upon signature of Governor

HB 21-1167 PRIVATE CONSTRUCTION CONTRACT PAYMENTS

Sponsors: Reps. Duran, Will/ Sens. Gonzales, Scott

For certain construction projects of at least \$150,000 in value, the bill forbids a property owner, contractor, or subcontractor from withholding more than five percent of the price of the work completed as retainage from the contractor or any subcontractor or supplier. To receive payment, the recipient must provide an executed lien waiver for amounts actually paid. The bill does not apply to contracts for one single-family dwelling, one multifamily dwelling with fewer than five units, or contracts with a public entity. Proponents of this bill have introduced bills to limit retainage or codify prompt pay requirements for a number of years running. Opponents have managed to stave off these bills in the past but this was the year the squeaky wheel finally got the grease.

<https://leg.colorado.gov/bills/hb21-1167>

Status: Governor Signed

Position: Oppose

Effective date: 9/7/21 (90 days following final adjournment)

HB 21-1229 HOMEOWNERS' ASSOCIATIONS GOVERNANCE FUNDING RECORD KEEPING

Sponsors: Rep. Titone, Ricks/Sen. Fields

This bill makes several changes to the regulations for home owners' associations (HOAs). HOAs may not prohibit the use of nonvegetative turf grass, and they are limited in how they may restrict the implementation of renewable energy generation. The existing restriction that political signs may be displayed only 45 days before an election is changed to 45 days before mail-in ballots are sent to voters. The bill requires HOAs to maintain a list of all fees, assessments, and expenses that it charges in connection with the purchase or sale of a unit, directs HOAs to provide documents to unit buyers as determined by rule, and requires HOAs to pay damages to a unit owner for failing to allow inspection or copying of records as specified by the bill. The bill was heavily amended, allowing stakeholders to drop their opposition.

<https://leg.colorado.gov/bills/hb21-1229>

Status: Passed House & Senate
Position: Oppose unless amended
Effective date: 9/7/21 (90 days after final adjournment)

HB 21-1286 ENERGY PERFORMANCE FOR BUILDINGS

Sponsors: Reps. A. Valdez, Kipp/Sens. Priola, Pettersen

This bill requires the Colorado Energy Office (CEO) to implement a building performance program. The program requires owners of covered buildings (50,000+ square feet) to submit annual benchmarking data by December 1, 2022, and by June 1 every year thereafter to the CEO. The bill establishes a process requiring certain electric and gas utilities to provide energy-use data to a covered building owner when requested by the covered building owner. The bill authorizes the Air Quality Control Commission (AQCC) within the Department of Public Health and Environment (CDPHE) to promulgate rules creating performance standards and setting penalty amounts. Covered building owners may seek a waiver from the requirements of the bill under certain circumstances. The bill creates a task force. The office will collect an annual fee from owners of covered buildings of \$100 per covered building. The office is required to transfer the fees collected to the state treasurer, who will credit the fees to the climate change mitigation and adaptation fund (fund) created by the bill. The bill directs the CEO to convene a task force with members identified in the bill, to develop and provide consensus recommendations to the AQCC and the Governor concerning:

- interim performance standards that would achieve a 7 percent reduction in GHG emissions by 2026 as compared to 2021;
- performance standards that would achieve a 20 percent reduction in GHG emissions by 2030 compared to 2021 levels; and
- the process for advising, soliciting public input on, and making recommendations to the AQCC on performance standards for 2030 to 2050.

Consensus recommendations will be sent to the CEO. The AQCC must promulgate rules by May 1, 2023, that consider the recommendations of the task force and achieve the GHG emission reductions outlined in the bill. The AQCC must also adopt rules regarding waiver and extensions of time regarding the performance standard requirement. The AQCC must also adopt rules, as necessary, to modify or continue the performance standards until 2050 in order to achieve or exceed the state's GHG gas emission reduction targets. CDPHE is authorized to assess civil penalties on covered building owners. Owners that violate the benchmarking requirements or provisions pertaining to the sale or lease of a covered property are subject to a penalty of up to \$500 for the first violation and up to \$2,000 for each subsequent violation. Owners in violation of performance standard requirements are subject to a penalty of up to \$2,000 for a first violation and up to \$5,000 for each subsequent violation, as established in rule by the AQCC. Public buildings are exempt from civil penalties. Civil penalties are credited to the Climate Change Mitigation and Adaptation Fund.

As introduced, this bill tied performance standards to the Energy Star program and required that certain performance standards be met by 2026. It also included extraordinary daily penalties for any failure to achieve such standards. These provisions were amended out of the bill and replaced by the task force, which was a huge victory for building owners. Once the performance standards were out of the bill, NAIOP changed from an oppose position to a support position, agreeing that benchmarking alone is good policy without the confusing, unattainable Energy Star performance standards and potential for oppressive penalties.

<https://leg.colorado.gov/bills/hb21-1286>

Status: Passed House & Senate
Position: Support as amended
Effective date: 9/7/21 (90 days following final adjournment)

HB 21-1308 PROPERTY TAX ADMINISTRATIVE PROCEDURES

Sponsors: *Reps. Gray, Larson/Sens. Moreno, Priola*

The bill attempted to make changes to administrative procedures related to property taxation. The bill requires that the property tax administrator provide advance notice and conduct public hearings concerning potential changes to the property tax materials produced by the state, including manuals, appraisal procedures, instructions, and guidelines. The administrator is required to notify interested persons of any proposed changes by email. If an interested person requests a notice by mail, the administrator may impose a fee to cover the administrator's cost of copying and mailing the notice. Interested persons have a right to petition the administrator for the issuance, amendment, or repeal of a property tax material. The administrator is required to consider petitions when proposing a change to the relevant material. Currently, with approval of the board of county commissioners, a county assessor may include an estimate of taxes in a notice of valuation. The bill requires this estimate, or a range estimate, to be included in a notice of valuation. When reviewing a taxpayer's objection to the valuation of a property, if an assessor finds that he or she made a systematic error and the valuations of other similar properties are incorrect, then the assessor is required to correct the error for the other properties. The bill also would have extended numerous property protest and appeal deadlines by one month each.

<https://leg.colorado.gov/bills/hb21-1308>

Status: Postponed Indefinitely

Position: Support

SB 21-173 RIGHTS IN RESIDENTIAL LEASE AGREEMENTS

Sponsors: *Sens. Gonzales, Moreno/Rep. Caraveo*

This bill makes changes regarding late fees charged by landlords and court procedures for forcible entry and detainer cases. The bill:

- limits the late fee amount a landlord may charge to the greater of \$50 or 5% (was \$25 or 2.5% as introduced);
- establishes a 7 day grace period for late rent payments (14 days as introduced);
- prohibits a landlord from initiating eviction procedures on the sole basis of failure to pay late fees;
- exempts the portion of rent paid by a rent subsidy provider from late fees; and
- requires that any late fees be disclosed in the rental agreement.

The bill also limits how late fees may be recouped. Late fees cannot be recouped from rent payments, they cannot accrue interest, and no more than one late fee may be applied to an overdue payment of rent unless the total of the fees is within the legal limit. A landlord who violates any of these rules is responsible for paying a penalty to the tenant and curing the violation within seven days of being notified of the violation. As introduced, the bill provided that violation that is not cured in time or that was committed by a landlord in bad faith is an unfair or deceptive trade practice for the purposes of the "Colorado Consumer Protection Act". This provision was amended out of the bill.

In current law, a defendant to a forcible entry and detainer action is required to appear in court at a time between 7 and 14 days from the issuance of a summons. The bill specifies what the summons must contain, including a list of available resources for obtaining legal aid and rental assistance, as provided by the Department of Local Affairs (DOLA). The bill also forbids the court from entering a default judgment for possession before the close of business on the date when the appearance is due. As introduced, the bill guaranteed the right to a trial by jury for both the plaintiff and defendant. This provision was also deleted from the bill.

As introduced, the bill repealed the requirement that a tenant deposit with the court the amount of rent due in an appeal and also repealed the bond requirement for the warranty of habitability and allows the tenant to assert an alleged breach of the warranty of habitability as an affirmative

defense. As amended, these bond requirements remain, unless the court determines that the tenant qualifies to have it waived due to their income (indigency exception).

The bill requires that a landlord accept payment of all amounts due from a tenant at any time until a judge issues a judgment for possession.

The bill also prohibits written rental agreements from assigning a cost to a party stemming from an eviction notice or eviction action from a violation of the rental agreement, and it requires that any fee-shifting clause award attorney fees and court costs to the prevailing party.

SB 21-173 was much, much worse as introduced than as adopted. Thanks to a few select legislators in both the House & Senate, we were able to get a number of amendments to significantly water down the bill.

<https://leg.colorado.gov/bills/sb21-173>

Status: Passed House & Senate

Position: Oppose

Effective date: October 1, 2021

SB 21-176 PROTECTING OPPORTUNITIES & WORKERS' RIGHTS ACT

Sponsors: Sens. Winter, Pettersen/Reps. Lontine, Gray

This bill purported to expand protections for Colorado workers by:

- adding 'marital status' and 'caregiver status' as protected classes under the Colorado Anti-Discrimination Act (CADA).
- expanding the definition of employee in relation to harassment claims by adding contractors, domestic service workers, unpaid interns, and volunteers as being under the control of the employer.
- changing the requirements of claiming a hostile work environment so that a single incident is sufficient for a claim, instead of a pattern of behavior.
- changing requirements around the investigation of claims.
- assigning more requirements to employers related to their ability to disprove claims and avoid liability.
- waiving sovereign immunity by a public entity for injuries resulting from unfair employment practices.
- repealing the limits on remedies in cases involving age discrimination.
- limiting the ability of an employer to require confidentiality during settlement; and
- limiting the use of pre-employment medical inquiries or examinations.

This bill also would have changed the pathway for claims to be heard in court. Currently, claims are allowed to be brought in district court after an employee exhausts all administrative remedies. This bill allows these claims to be brought in county or district court without the need to exhaust all administrative remedies as long as the person first submits a written charge to the Civil Rights Division in the Department of Regulatory Agencies (DORA) or makes a written demand for compensation or other relief from their employer. It expands the time limit for filing from 6 months to 300 days after the incident occurs. In addition, a jury can consider comments and incidents not directed at the employee bringing the claim.

<https://leg.colorado.gov/bills/sb21-176>

Position: Monitor

Status: Postponed Indefinitely

SB 21-200 REDUCE GREENHOUSE GASES INCREASE ENVIRONMENTAL JUSTICE

Sponsors: Sens. Winter, Moreno/ Rep. Jackson

This bill directs the Air Quality Control Commission (AQCC) within the Department of Public Health and Environment (CDPHE) to promulgate rules related to greenhouse gas (GHG)

emissions reductions and GHG emissions fees. It also requires electric utilities to submit plans to the Public Utilities Commission (PUC) that includes GHG emission reductions. Lastly, the bill creates an environmental justice ombudsperson and advisory board to promote environmental justice throughout the state. The Governor stated that he would likely “veto” the bill and as a result it remained on the senate calendar. Proponents worked to place many of the provisions of this bill on HB 21 1266.

<https://leg.colorado.gov/bills/sb21-200>

Position: Oppose

Status: Laid Over to 12/9/21

SB 21-246 ELECTRIC UTILITY PROMOTE BENEFICIAL ELECTRIFICATION

Sponsors: Sen. Fenberg/Reps. A. Valdez, Froelich

This bill requires investor-owned electric utilities to file beneficial electrification plans with the Public Utilities Commission (PUC) by April 1, 2022, and no less frequently than every three years. Beneficial electrification is defined as converting the energy source of a customer’s end use from a non-electric fuel source to a high-efficiency electric source, or avoiding the use of non-electric fuel sources in new construction or industrial applications, if the result reduces greenhouse gas emissions over the lifetime of the conversion or avoidance and reduces societal costs or provides more efficient use of grid resources. Beneficial electrification plans must, at minimum:

- include programs to advance beneficial electrification for residential and commercial customers;
- target 20 percent of program expenditures to low-income households or disproportionately impacted communities with associated outreach plans;
- include budgets, targeted number of installations, projected fuel savings and cost-effectiveness calculations, and greenhouse gas emissions reductions;
- demonstrate that the incremental electrical load will be no more carbon intensive than the utility’s portfolio;
- target incentives toward new and existing buildings; and
- demonstrate that electric grid reliability will be maintained.

Utilities and the PUC are directed to account for the social cost of carbon dioxide and methane in cost-benefit analyses and include both avoided emissions from combustion and leakage as well as the incremental emissions from electricity generation. The PUC must allow cost recovery for implementing approved beneficial electrification programs and may consider incentive mechanisms to encourage utilities to invest in these programs. Investor-owned electric utilities are required to file a beneficial electrification strategic issues application with the PUC by April 1, 2024, and no less frequently than every six years that proposes a 10-year beneficial electrification target. Electric utilities must comply with the labor standards outlined in the bill when implementing their programs, and submit annual reports to the PUC describing plan implementation. Other non-investor owned electric utilities are encouraged to implement beneficial electrification plans.

Position: Oppose

Status: Passed House & Senate

Effective date: 9/7/21 (90 days after final adjournment)

SB 21-260 SUSTAINABILITY OF THE TRANSPORTATION SYSTEM

Sponsors: Sens. Fenberg, Winter/Reps. Garnett, Gray

This bill creates new sources of dedicated funding for the state’s transportation system, creates four new state enterprises, modifies an existing state enterprise, and expands authority for transportation planning organizations. The bill increases state and local government revenue

and expenditures on an ongoing basis and raises the state's revenue limit under TABOR. [Click here](#) to link to the updated fiscal note for SB 21-260 (as of June 2), which contains a thorough summary of the lengthy bill as amended.

<https://leg.colorado.gov/bills/sb21-260>

Status: Sent to Governor

Position: Support

Effective date: Upon signature of Governor

SB 21-262 SPECIAL DISTRICT TRANSPARENCY

Sponsors: Sens. Zenzinger, Gardner/Reps. Bird, McKean

This bill makes multiple changes to the statutory provisions related to special districts. Notably, the bill:

- changes the required methods of election notice in a call for nominations;
- requires that active special districts created since 2000 maintain a website with specified content;
- modifies the content requirements of annual reports and allows for electronic submission to counties or municipalities; and
- limits a special district's power of eminent domain to areas within the boundaries of the service plan, and only with a written resolution from the overlapping local government.

When a special district has entered into contracts with private entities for design and construction services, the bill requires that an engineer certify certain cost reimbursements as reasonable, that the public improvements comply with construction standards, and that the improvements are fit for their intended purpose. Finally, beginning January 1, 2022, the bill requires that sellers of newly constructed residences provide certain information and disclosures to a home buyer related to a metropolitan district's service plan, debt issuance, applicable mill levies of the district and overlapping jurisdictions, and an estimate of property taxes.

<https://leg.colorado.gov/bills/sb21-262>

Status: Passed House & Senate

Position: Support

Effective date: 9/7/21 (90 days after final adjournment)

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