

BIAW Explores Legal Options for Challenging Energy Code Changes

BIAW attorneys continue work on a federal court challenge to the recently adopted energy code changes. Late last year as the State Building Code Council was considering the excessive changes, BIAW attorneys outlined the potential legal consequences of adopting strict energy code “improvements” to the members of the Council. Many of the proposed changes require upgraded HVAC equipment and systems, infringing on an area controlled by federal law.

In the 1970s, Congress adopted a federal law that says energy efficiency and energy use standards for certain HVAC equipment is governed (“pre-empted”) by federal law, not state and local laws. Congress took this action to avoid the mechanical systems industry from having to comply with conflicting state standards for their equipment. This law has recently been put to the test in a federal court case involving energy code improvements approved by the City of Albuquerque, where the judge issued an injunction stopping the city from moving forward with proposed changes.

After exhaustive analysis, BIAW’s legal team and team of energy code experts are of the opinion that many of the proposals adopted by the Council are also pre-empted by federal law and therefore illegal.