

HB 431- Pre-empting New Mexico's Capacity to take Climate Action

HB 431, the Local Government Utility Services Restrictions Act, is sponsored by Rep.'s Zamora and Harry Garcia and is presented as protective legislation to prevent out-of-touch Santa Fe'ans from enforcing environmental rules that they argue will raise expenses for rural New Mexicans. The bill had its first committee hearing in House Energy and Natural Resources Committee with two Democrats, Representatives Borrego and Miguel Garcia joining with all Republicans for a "do pass." It goes to House Government, Elections and Indian Affairs Committee next. At the hearing bill proponents neglected to explain how this short, two-page bill:

1. Restricts the capacity of New Mexico counties and municipalities from enacting building codes for new buildings, implementing energy efficiency programs, and otherwise thwarting the will of local governments to set standards and develop programs to improve the lives of their residents in numerous ways. **The FIR notes that it may even restrict the ability of the state to implement the Energy Transition Act.**

2. **Conspicuously omits the fact that renewables are cheaper and save people money** compared to continued dependence on volatile natural gas, propane and private, investor-owned-utilities (the issue of climate aside).

3. **Comes to New Mexico as part of a well-funded campaign by a coalition of conservative activists and fossil-fuel companies to pre-empt restrictions on fossil-fuels.** The State Financial Officers Foundation, a little-known nonprofit organization, helps legislators and other officials to fight any action on climate as "woke." (<https://www.nytimes.com/2022/08/05/climate/republican-treasurers-climate-change.html>) They promote legislation prohibiting building code changes requiring electric stoves or rooftop solar, financial investment strategies that limit investments in O&G, energy efficiency measures, and measures allowing municipalities to break free from investor-owned utilities. This network has succeeded in passing similar pre-emption laws in 21 states.

The bill's proponents frame efforts to reduce emissions as a threat to employment and revenue, and have turned climate science into another front in the culture wars. In the cross-hairs are municipalities and counties that want to reduce greenhouse gas emissions.

The natural gas industry was losing in cities across the US. Then came an obscure partisan tactic called preemption.

When Regina Romero took office as the Democratic mayor of Tucson, Arizona, in 2019, she wanted her city to take action on climate change. Local building codes might have been a logical place to start: In the US, some 70 million buildings rely on fossil fuels that warm the planet, such as oil and gas, for heating and cooking. They generate a hefty 13 percent of national greenhouse gas emissions.

While many answers to climate change require national and even international action, cities often have the unilateral power to craft local rules like building codes. But before the city of Tucson could even look at possible building reforms, the Republican-led state legislature took away its power to do so — by passing a state law that natural gas utilities are “not subject to further regulation by a municipality.”

Essentially, HB 431 limits the pool of potential policy solutions we can enact, tying the hands of local officials, inhibits the progress and innovation in our municipalities and counties. Passing preemption laws is gaining ground. “[L]ocalities are cut off at the knees, because they’re in states where lawmakers are hostile” to these kinds of climate regulations, says Sheila Foster, a Georgetown University professor who specializes in urban environmental law.[1] Local policies like building codes may seem unimportant in the larger context of the climate crisis, but they turn out to be a hidden linchpin in the fossil-fuel economy.

The US can’t afford to cut cities out of the fight against global warming

In 2019, environmentalists heralded Berkeley, California, as the first city to pass an ordinance requiring all new construction to be powered by electricity instead of gas. Berkeley helped prove that despite Trump’s rollback of national climate policies, progress on climate goals could accelerate locally.

As of September 2021, at least 50 other cities and counties in California have followed suit, passing variations on new building codes that would help to phase out fossil fuels in their building sectors. Together, this kind of local action can make a monumental difference in addressing climate change.[2] Policies that cities, states, and businesses already have on the books are expected to lower the country’s greenhouse gas emissions by almost a fifth in the next five years. More ambitious policies could achieve cuts of up to 37 percent by 2030, according to a 2020 report from the climate advocacy group America Is All In.

American Legislative Exchange Council, a lobbying group that advances corporate legislation at the state level, has pushed preemption bills in dozens of states. Over the years, lawmakers have used state preemption to target local bans on plastic bags, plastic straws, and fracking, as well as local efforts to increase the minimum wage.

Twenty-one states, many with GOP-controlled legislatures, have passed laws to prevent cities from prohibiting gas use in buildings.[3] There are six states among two dozen that last year that issued proposed or passed legislation prohibiting state government entities from doing business with financial firms that take environmental, social, and corporate governance (ESG) into consideration when making investment decisions as anti-ESG efforts spread from state treasurers and attorneys general to governors and lawmakers.[4] Allowing preemption will have far-reaching negative consequences to address climate and environmental harms.

New Mexico needs the participation of local governments to respond to the climate crisis in ways consistent and responsive to community needs.

New Mexicans are already suffering from drought, extended wildfire threats and increasing heat. Statewide mandates and programs are unlikely to reflect the needs of rural communities accurately. We must have participation from local governments, the officials most familiar and responsive to community values and priorities, to protect New Mexico lives and livelihoods.

[1] <https://www.vox.com/22691755/gas-utilities-fight-electrification-preemption>

[2] <https://rmi.org/taking-action-to-get-fossil-fuels-out-of-buildings/>

[3] <https://www.washingtonpost.com/climate-environment/2023/01/11/gas-stoves-fossil-fuels-climate/>; <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/01/06/natural-gas-bans-are-new-front-in-effort-to-curb-emissions>

[4] <https://newhampshirebulletin.com/2023/01/17/states-that-limit-business-with-banks-that-boycott-fossil-fuels-could-pay-high-cost-study-says/>