

# PUBLICATION

---

## Challenging Legal Mandates for Green Building

Authors: Stephen K. Pudner  
March 07, 2012

**What would you do if you were denied a certificate of occupancy because a private company decided your building was not "green" enough? While this may seem far-fetched, it is a question you may have to answer if you work in one of the numerous municipalities that have adopted the U.S. Green Building Council's "LEED" rating system for "green" construction as part of their building codes.**

There are numerous avenues for challenging the legality of such laws, including whether the laws are unconstitutional. Another avenue is arguing that the local laws are preempted by federal law. This was the basis for a recent federal court challenge of the Albuquerque energy code, including its LEED mandate. **In a 2010 order**, a federal judge upheld portions of the Albuquerque's energy code requiring LEED certification against a challenge that these requirements were preempted by federal law, but struck down other portions of the law. **In a subsequent order**, the judge struck down the entire law, including the LEED requirement, because she determined that the LEED requirements could not be severed from the preempted portions of the law.

It remains to be seen whether Albuquerque will reenact the LEED requirement as a stand-alone law, or whether such a stand-alone LEED requirement would survive legal scrutiny on other grounds, such as challenges to its constitutionality.

It will also be interesting to see whether the USGBC's LEED rating system itself survives challenges from competing "green" building codes, such as the 2012 International Green Construction Code recently adopted by the International Code Council.

If you are denied a building permit or are otherwise impeded because your project is deemed not to be "green" enough according to a law requiring LEED compliance, be prepared to defend your rights, and your livelihood, by challenging the validity of the law.