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Opinion: Proposed clean air rules could create commercial building crisis

Colorado air quality regulators are creating rules to improve energy efficiency



The downtown Denver skyline is pictured on July 3, 2023. (Photo By Kathryn Scott/Special to The Denver Post)

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PUBLISHED: July 25, 2023 at 6:43 a.m. | UPDATED: July 25, 2023 at 6:45 a.m.



Colorado's construction, real estate, and building management communities all support the state's goal of improving commercial properties' energy performance and efficiency in the Denver metro area and around the rest of Colorado.

We are proud of the advances we have made in building efficiency and the new technologies and ideas we have incorporated into our buildings. We are also proud that the approach we have taken has been prudent, gradual, and done in a way that does not cause financial harm to the public. We have worked in good faith with lawmakers and regulators to try and meet the standards that have been set by the government while achieving that crucial balance needed to keep costs on Coloradans manageable and tolerable.

Unfortunately, our efforts are being threatened by proposed new rules being advanced by the [Air Quality Control Commission](#) (AQCC). The AQCC is set to hold hearings next month on proposed [Regulation 28](#), which seeks to quantify greenhouse gas emissions that can be attributed to buildings and establish related building performance standards.

The rule stems from a bill passed in 2021 that created a [Building Performance Standards Task Force](#). The Task Force worked with numerous stakeholders to come up with their recommendations. Concerningly, the AQCC saw fit to ignore a great deal of the Task Force's work and instead is taking it upon itself to try and impose a set of inflexible, one-size-fits-all building performance standards that many building owners will, through no fault of their own, find themselves unable to meet in the strict timeline provided.

Some may automatically assume that building owners and the development community are reflexively opposed to the adoption of building performance standards, which promote energy conservation and efficiency. In fact, we are not. As an industry, we support the state's energy-efficiency goals, and for years as private actors, we have worked to make our buildings better, cleaner, and more efficient.

But as a matter of public policy, we must be careful that this is pursued in a manner that actually realistically attains those goals, and that means having flexibility built into the rules to account for the vagaries of construction, different building types, specific locations, uses, special requirements, and many other factors. We get into trouble when dogmatically inflexible rules are imposed on an artificial and arbitrary timetable, with no consideration for individual circumstances. This inevitably results in higher costs, building abandonment, widespread non-compliance, or a combination of these outcomes, all of which are undesirable.

Take hospitals and other medical-related buildings, for instance. These facilities are unique in their construction, layout, and in that by nature, they use a significant amount of energy to keep monitors, diagnostic machines, sanitation equipment and the like running 24 hours a day.

The data our coalition pulled from Building Performance Colorado reports shows that many of the state's hospitals will face enormous challenges meeting the proposed energy efficiency targets; for some, the challenges will be insurmountable, and the targets impossible to reach. The average hospital will need to accommodate a 15% reduction in energy usage; some will need to attain 30% or even 40%. How will these reductions be achieved? Only keep monitors on part of the time? Only operate during non-peak hours? And what happens to the hospital and the community it serves if it cannot reach those targets? Will it be closed? Absorb fines that will need to be passed down to patients? This is just one example of how blanket energy efficiency targets are simply unrealistic and unworkable.

In addition to unique building types and uses, there are other factors that the Division has not considered in devising these proposed new rules. Since the COVID-19 pandemic, vacancy rates in commercial buildings have skyrocketed; in downtown Denver, it is estimated at over 25%. Some of our city's tallest and most iconic towers are already behind on their loan payments. And yet, this new rule will impose on these owners' significant capital expenditures; for example, to install energy-efficient windows or electric HVAC systems.

There is also the question of the feasibility of electrification. Like other aspects of this proposed rule, whether electrification is even feasible depends on a number of factors, including design, building age, access to an electrical supply, existing systems, and other considerations, which inflexible standards cannot anticipate or allow for. For a great many buildings in the metro area, the costs to electrify within the timeframe allowed will be enormous.

The end result of all of this will unavoidably be higher costs to tenants, both in rents and energy bills, at a time when everyone's bills are already too high. Building owners and developers absolutely support the goal of energy efficiency, but it cannot be done overnight, as Regulation 28 prescribes. We simply ask that the state take a realistic approach, rather than a dogmatic one. The latest report from Moody's shows that as of the 2nd quarter of this year, 27% of commercial real estate loans in the country are already delinquent – before the addition of tens of millions of dollars in new costs. By adding the costs of complying with these new mandates, the state will potentially push a financial challenge to a financial crisis.

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