

Sixth Legislative District

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GREENWALD INTRODUCES BILL TO REQUIRE RADON TESTING OF ALL SCHOOLS AND HOME SALES

(TRENTON) - Assemblyman Louis D. Greenwald recently introduced legislation that would require radon testing in schools and in homes at the time of sale or lease.

The measure, A-4134, would mandate that schools be tested every five years for the presence of radon. The bill also would require residences to be tested at the time of sale, or once every five years in the case of rental properties.

Radon is a radioactive gas that is emitted from the normal decay of uranium in rocks and soil. The naturally occurring gas is the second-leading cause of lung cancer in the United States, according to the National Cancer Institute. Radon is linked to up to 22,000 lung cancer deaths annually.

"Radon can be a silent killer that does not have to go undetected," said Greenwald (D-Voorhees). "Testing in schools and homes is a simple way to protect our children and families from the ill effects of this invisible, odorless gas."

Radon can move upward through soil and enter a building by way of cracks and openings in the foundation. In low-ventilated areas, including underground mines, radon can build up to concentrations that increase a person's risk of lung cancer.

In New Jersey, the Reading Prong geological formation is rich with uranium, and homes along it have tested high for indoor radon. The geological formation stretches from Pennsylvania through northwestern New Jersey into southern New York State.

Under the Greenwald bill, homes would need to be tested as a condition of sale, and mitigation performed when the radon level is at least four Pico curies per liter. Currently, radon testing is optional at the time a home is sold.

The bill's requirement to test every five years would apply to all public, private, and charter schools.

AN Act concerning radon testing in educational facilities and residential properties supplementing Title 18A of the New Jersey Statutes and Title 26 of the Revised Statutes, and repealing section 3 of P.L.2000, c. 122.

BE IT ENACTED by the Senate and General Assembly of the State Of New Jersey:

1. The Legislature finds and declares that:
 - a. Radon is a naturally occurring radioactive gas, found in soil everywhere in varying concentrations throughout the State that *can* move easily through soil and tiny cracks in rock and when it reaches the surfaces of the soil, it disperses and is diluted to very low levels in the outdoor environment.
 - b. When radon gas moves upward through soil beneath a building, it may enter through cracks or other openings in the foundation and build up to unacceptable levels, but its presence, even in high concentrations, cannot be detected by human senses because the gas is invisible and has no odor.
 - c. In New Jersey, there is a particularly rich geological formation, called the Reading- Prong, which stretches from Pennsylvania through northwestern New Jersey into southern New York State, and the testing of homes built along this geologic formation has revealed high indoor levels of radon gas; and further testing in New Jersey, beyond the Reading Prong area ahs shown additional areas where homes have elevated radon levels.
 - d. Long term or chronic exposure to radon has been linked to lung cancer, and the greater the concentration and the longer a person exposed, the greater the health risk; and, therefore, it is appropriate to require radon testing in order to protect public health.

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 - a. Except as otherwise provided pursuant to subsection b of this section, the local school board of each school district, the board of trustees of each charter school, and the principal administrator of each private school respectively, shall test the school for the presence of radon gas or radon progeny at least once every five years. If the school has been tested less than five years prior to he effective date of this act, then the test shall be performed within five years of that test and once every five years thereafter.

 - b. The Commissioner of Education in conjunction with the Department of Environmental Protection, shall determine the extent of testing required and the locations for the testing, provided that at least every building used as a school in which a child care center is operated by a nonprofit organization is tested by the school in which the child care center is operated for the presence of radon or radon progeny at least once every five years. The local school board of each school district, the board of trustees for each charter school, and the principal or chief administrator of each private school respectively, in consultation with the Department of Environmental Protection and the principal of each school to be tested, shall determine the buildings to be tested, the locations within each building to be tested, the method of testing and the procedures concerning notification and circulation of the testing results.
 - c. As used in this section:

“Charter School” means a school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.).

“School” means any public or private school as defined in N.J.S.18A:1-1

- 3 a. Every contract of sale of residential real property shall include a provision requiring the seller, as a condition of sale, to test for radon gas ~~and~~ **or** radon progeny in the dwelling, and mitigate any radon contaminations when radon *levels* test at or above four Pico curies per liter *or radon progeny test at or above 0.016 WL. (Alternative, would be to remove reference to radon progeny measurements)*
- 1) Testing and mitigation shall be performed by persons certified by the Department of Environmental Protection to provide those services, in accordance with P.L.1986, c.83 (C.26:2D-70 et seq.) and appropriate department protocols.

Comment: While the paragraph above says, "Testing and mitigation shall be performed by persons certified by the DEP to provide those services.." the concern is the seller may choose to go to Home Depot, purchase a kit and perform the test himself. Perhaps it needs to be clarified in the section 3a by changing it to read something like, "Every contract of sale of residential property shall include a provision requiring as a condition of sale, the performance of a radon test by a NJ DEP licensed radon measurement professional at the seller's expense." Obviously, if we have sellers performing their own tests, it's likely that most every home will test low.

- 2) When levels of radon contamination test *at* or above four Pico curies per liter, a copy of the radon test results and plans for subsequent remediation shall be submitted to the county health department, health agency, of designated health officer.
 - 3) Closing of title of sale of residential real property shall not occur unless both the buyer and seller have received and reviewed a copy of the radon test results, and mitigation, if required, has been performed, pursuant to this subsection. At closing, the buyer and seller both shall certify in writing that they have received and reviewed the radon test results and mitigation plan, if required.
- b. Within 18 months after the effective date of this act, and at least once every five years thereafter, the leaser of any residential real property, shall test for radon gas ~~and~~ **or** radon progeny in each rental building and shall mitigate any radon contamination when **radon** levels test at or above four Pico curies per liter *or progeny test at or above 0.016 WL.*
- 1) Testing and mitigation shall be performed by persons certified by the department to provide those services, in accordance with P.L.1986, c.82 (C.26:2D-70) and appropriate department protocols.
 - 2) When levels of radon Concentration test at or above four Pico curies per liter, a copy of the radon test results and plans for subsequent remediation shall be submitted to the county health department, health agency, or designated health officer

Comment: First, section 3b2 above does not declare who is responsible for submitting the copy of the radon test results and plans for subsequent remediation. Is it the home seller, the home buyer, the real estate agent, the licensed radon tester or the licensed mitigation contractor?

Second, I wonder if enough thought has been given to the amount of work the designated health agency will incur by receiving, data basing and enforcing the submittals. It is also unclear as to just what the health agency is to do with the submittals. Will they be evaluating the test results? Will they be evaluating the mitigation plan? Is the intent merely to create a database? If so, since all test results and mitigations already have to be submitted to the NJDEP, is submittal to the county health department redundant? If it is the licensed tester or mitigator who is required to make the submittal, having to report similar information to the health department will put an unnecessary burden on the small businesses that perform testing and mitigation.

- 3) Within 30 days *after* receipt of the results of the test conducted pursuant to this subscription, the leaser shall provide a written copy therefore to each rental unit on the property, and notification that mitigation is required when radon contamination tests at or above four Pico curies per liter. The lesser shall also provide a written report of the most recent test results and mitigation performed to any new lessee of a rental unit on the property.
- c. The Department of Environmental Protection shall adopt, pursuant to the “Administrative Procedure Act” P.L.1968, c.410 (C.52:14B-1 et seq.)
- d. Section 3 of P.L.2000, c.122 (C, 18A:20-40) is repealed.
- e. This act shall take effect immediately.

STATEMENT

This bill would require certain educational facilities to be tested for the presence of radon every five years and also require the testing of residential properties at the time of sale, or in the case of leased residential properties within 18 months of the bill's enactment into law and at least once every five years thereafter.

Specifically, this bill would require the local school board of each school district *the* board of trustees for each charter school, and the principal or chief administrator of each private school, respectively, in consultation with the Department of Environmental Protection (DEP) and the principal of each school to be tested, to determine the buildings to tested, the locations within each building to be tested, the method of testing, and the procedures concerning notification and circulation of the testing results.

The Council on Local Mandates, in a decision dated August 20, 2004, found that section 3 of P.L.2000, c.122 (C.18a:20-40), which required public school buildings to be tested for the presence of radon gas every five years, constituted an unfunded mandate in violation of Article VIII, Section 2 paragraph 5 of the New Jersey Constitution. The council declared that the statute ceased to be mandatory in its effect and expired.

This bill cures the constitutional violation by repealing section 3 of P.L.2000, c.122 (C.18A:20-40), and reenacting the radon testing requirement and applying it to public schools, private schools, and charter schools.

In addition, this bill would require the seller of residential real property, as a condition of sale, to test for radon gas ~~and~~ *or* radon progeny in the dwelling and to perform mitigation when the radon contamination is equal to or greater than four picoCuries per liter *or the radon progeny concentration is equal to or greater than 0.016*

WL. A seller would be required to submit a copy of the radon test results and remediation plans to the county health department, health agency, or designated health officer prior to mitigation of contamination. All testing and mitigation would be required to be performed by persons certified by the DEP, and in compliance with department protocol.

Comment: Since New Jersey has never adopted the EPA Protocols for Radon and Radon Decay Product Measurements in Homes (EPA 402-R-93-003), mitigation decisions are currently being made on the results of a single, passive, time-integrating device (charcoal of electret ion chamber) placed in the basement. In putting together the EPA Protocol above, the Science Advisory Board determined three testing options to minimize mistakes in the decision-making process. According to the EPA Protocol, if a decision is to be made based on a single deployment period (of at least 48 hours), the tester must place a pair of collocated passive time-integrating devices (Option 2) or use a CRM capable of integrating and recording at hourly readings (Option 3). Their logic in requiring two collocated devices is based on the reduced likelihood that both devices would be statistical outliers. I assert the Department needs to address this issue regardless of whether the bill passes, but if the bill does pass and the Protocol issue is not addressed, even more mitigation decisions will be based on a substandard test.

This bill would prohibit closing on the sale of residential property unless both the buyer and seller have received and reviewed a copy of the radon test results and a copy of any remediation plan, and the mitigation, if required has been performed.

Further, within 18 months of the bill being enacted into law, and at least every five years thereafter, this bill would require lessors of residential real property to test for radon gas ~~and~~ **or** radon progeny in each rental building and mitigate property when the levels of radon contamination are at or above four picoCuries per liter. Lessors would also be required to provide written notice of test results to each rental unit within 30 days of receipt of the test results, and provide notification that mitigation is required when radon contamination tests at or above four picoCuries per liter. Lessors would also be required to provide a written report of the most recent test results and any mitigation performed to any new lessee of a rental unit on the property.

PL.1997, c.44 (C.30:SB-5.2) requires that all licensed child care centers must be tested for the presence of radon at least every five years. This bill does not change that requirement of current law.

Requires radon testing of certain educational facilities every five years, residential properties at the time of sale, and residential lease properties within 18 months and every five years thereafter.

***Comment: Since it would be impractical and costly to test for both radon and RDPs, the “and” in these sentences should be changed to “or” and the words “or 0.016 WL (according to the latest EPA Citizen’s Guide) added to the end. I suppose another solution would be to eliminate the words “radon progeny” entirely, only allowing radon gas measurements to be performed*