

Approved: 4/2/08

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:18 A.M. on March 24, 2008 in Room 784 of the DSOB.

All members were present except:

Bob Grant- excused
Brenda Landwehr- excused
Broderick Henderson- excused
Candy Ruff- excused
Kasha Kelley- excused
Lana Gordon- excused

Committee staff present:

Renae Jefferies, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Luke Bell, Kansas Association of Realtors
Chris Wilson, Kansas Building Industry Association
Martha Neu Smith, Kansas Manufactured Housing Association

Others attending: See attached list.

The Chairman opened the hearing on **Sub for SB 577-Radon certification and radon awareness laws.**

Luke Bell presented his testimony as neutral on **Sub 577 (Attachment 1)**. He indicated that KAR does not oppose the proposed requirement to include additional language in all residential real estate contracts. However they do not think it necessary to put the language in a bold font. KAR also supports the certification of individuals who test for and mitigate radon gas but KAR would like to have a statutory cap on the certification fees that can be charged. Luke said that KAR was concerned that the Kansas Department of Health and Environment would be given authority to adopt standards that were more stringent than the Federal Guidelines. Finally KAR was concerned about the requirement that the results of all radon tests and radon reports be filed with KDHE. KAR wants the bill to have language whereby the owner could give his consent to the release of the tests or report to KDHE.

Representative Grange asked Luke if this bill was necessary. Luke stressed that they were neutral on the bill and wanted to take care of their concerns on the bill. We are concerned with making sure people who offer professional services are certified properly. If our amendments are adopted we will have no problem with the bill. Representative Grange asked if their were unqualified people doing the tests. Luke said yes, their may be some home inspectors who do a radon test and are not qualified to do the test.

Representative Goico was concerned that people might not run the test because of the reporting requirement. Luke said they were concerned by privacy. Unless I consent I do not want the information revealed to third parties.

Chris Wilson presented her testimony as an opponent of **Sub 577 (Attachment 2)**. Chris said that they did support the amendments made by the Kansas Association of Realtors. However they do have some other concerns. One of their concerns is maintaining the afford ability of housing. Also it is very important to establish reasonable maximum fees. Additionally the Kansas Building Industry wants to be sure that a national standard is used.

Martha Neu Smith appeared as an opponent of **Sub 577 (Attachment 3)**. The Kansas Manufactured Housing Association had two problems with the bill. First, was the broad authority that the Secretary is given. Nothing in the bill prevents the KDHE from adopting their own standards of permissible levels of radon. The second area of concern was the action of taking the fees out of the bill. Hopefully tomorrow we can have language that focuses on those two areas.

Representative Ruiz asked about the schedule of fees. Martha said that the Federal & State Committee took

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:18 A.M. on March 24, 2008 in Room 784 of the DSOB.

the caps out but they would like to see them reinserted.

Representative Grange had a question about enforcement. How do we enforce the law. Kim Steves said that KDHE would inspect contractors as they perform radon measurements and mitigation systems as they are being installed and also look at their records. Representative Grange also asked Kim Steves how KDHE would find out that he was doing radon inspections. Kim said those contractors who are going to the trouble of becoming certified and paying the fees would report the ones who are competing against them and are not certified. Representative asked how they arrived at \$25,000 estimate of income to the state. Kim said they were making a guess as to how many were not certified in the state.

Representative Brunk asked what the process was if a buyer and seller were a couple of days from closing and high radon levels came up. Kim said that it was between the buyer and seller. There is no requirement for mitigation. This is the perfect time to negotiate with the seller.

Representative Humerickhouse asked how many employees would be added at KDHE. Kim said that one employee would be added.

Representative Kiegerl asked Luke Bell about the privacy concerns that KAR has in Section 11 of his balloon. Luke said that if you sell your home after doing a radon test you must disclose the information to the buyer. If you are not selling you do not have to disclose it.

Representative Huntington asked Chris Wilson if the Kansas Building Industry Association would be happy with national certification. Chris said that yes, it could reduce costs if the national standards were adopted by the state.

Kim Steves said that KDHE was not interested in having a separate certification program. We are intending to use the National Environmental Health Association and/or the National Radon Safety Board certifications. So if they are already certified by one of the national associations they only have to pay a fee to be certified in Kansas.

Representative Goico asked if the \$5 test would still be available. Kim said yes, you could still do the \$5 to \$20 do it yourself test. You are not required to hire a contractor. Kim said that most of the labs that process the do it yourself tests submit data to KDHE. They do not get to the address level but do get to the zip code level.

Representative Brunk asked about the do it yourself test being tampered with by the seller. Contractors usually have a continuous radon monitor. If it is tampered with it will show up in the test. Therefore the home buyer should use a certified testor.

Representative Huntington asked about the zip code info supplied by the labs. Kim said they use it to generate maps and do comparisons with lung cancer studies.

Representative Goico asked what the result would be if windows were opened during the test. Several of the technical staff of KDHE said that the test would show fluctuations in the data. Representative Goico asked what the penalties were for the homeowner who tries to falsify the tests. Kim said at this time they do not have penalties. There might be consequences if fraud is proven.

Representative Ruiz asked about the time element for accurately performing the tests. Kim said it was 48 hours and the test result is an average radon level.

The Chairman closed the hearing on **Sub 577**. The hearing would be resumed on Tuesday, March 25th. The committee was adjourned at 10:05 AM.

COMMERCE & LABOR COMMITTEE

DATE: 3-24-08

NAME	REPRESENTING
Andy Sanchez	KS AFL-CIO
Kim Steves	KDHE
Brian Hanson	KSU for KDHE
Gary Hodgden	AAIR Professionals - Inc.
Roger Dahlby	Advanced Environmental Services Inc.
Susan Kane	KOTTE
Tom Coates	KDHE
Charlotte Smith	KDKIA
Chris Wilson	KBIA
Shari Albrecht	KDHE
Luke Bell	KS Assoc. of REALTORS



To: House Commerce and Labor Committee

From: Luke Bell, KAR Director of Governmental Relations

Date: March 18, 2008

Subject: **SB 577** – Requiring Additional Disclosures on Radon Gas in Real Estate Contracts and Enacting Certification Requirements for Individuals Testing and Mitigating Radon Gas

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer neutral testimony on **SB 577**. KAR has faithfully represented the interests of the 10,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

SB 577 would make major changes to existing state law concerning the disclosure, testing and mitigation of radon gas in this state. In summary, this legislation would require all residential real estate contracts to contain new language concerning the potential hazards associated with radon gas and require all individuals who perform radon tests or mitigation to be certified by KDHE.

When this legislation was worked in the Senate Federal and State Affairs Committee, KAR was an opponent as the language would have required sellers to conduct a mandatory test for radon gas in all real estate transactions and would have added additional burdensome requirements to the real estate transaction process. However, the committee adopted an amendment proposed by KAR that eliminated these additional requirements and mandates from the legislation.

Following the Adoption of an Amendment in the Senate Committee, KAR Does Not Oppose the Proposed Requirement to Include Additional Language in All Residential Real Estate Contracts

As a result of the adoption of this amendment in the Senate committee, KAR does not oppose the provision in Section 1(c) on Page 1 of the legislation that requires sellers to provide a disclosure notice in all residential real estate contracts concerning the potential hazards associated with radon gas. As real estate professionals who assist thousands of Kansas families pursue homeownership opportunities in this state every day, we have no problem with providing consumers with more information on radon gas in the real estate transaction.

However, at the conclusion of the Senate committee's work on this legislation, an unexpected amendment was added that required the language in the contract to be in a bold font. In our opinion, this is unnecessary and will not result in any additional comprehension or understanding of the new language in the disclosure notice.

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Attachment # 1

We would suggest that the committee consider deleting the requirement that this language be displayed in a bold font when this legislation is worked by the committee to make it similar to language passed by this committee last session in **HB 2295** to require disclosures in all residential real estate contracts pertaining to the potential proximity of registered offenders. While we would agree that it is important that consumers receive adequate information on the potential hazards associated with radon gas, it is no more important than other potentially dangerous property conditions discussed in the standard residential real estate contract.

Existing State Law Already Requires Sellers and Real Estate Licensees to Disclose to the Buyer Any Known Material Defects in the Property Subject to a Real Estate Transaction Including Elevated Levels of Radon Gas

Existing state law already requires sellers to disclose material facts to the buyer of real property when the seller has knowledge of a defect in the property that is not within the fair and reasonable reach of the buyer. In a real estate transaction, this information is typically disclosed to the buyer by the seller in the Seller's Property Disclosure Statement.

As part of the Seller's Property Disclosure Statement, the seller lists any known material defects that exist in the property at the time the form is completed. In this statement, the seller provides disclosures to the buyer on the condition of various conditions in the property ranging from the functionality of household appliances to the existence of lead-based paint or radon gas in the property.

In addition, K.S.A. 2003 Supp. 58-30,106(d)(1) requires real estate licensees to disclose to the buyer all adverse material facts actually known by the licensee, including but not limited to any environmental hazards or physical defects in the property (which includes radon gas). Thus, if the real estate license has actual knowledge that the property has elevated concentrations of radon gas, the real estate licensee must disclose this information to the buyer.

As a result, KAR does not oppose the inclusion of the language in Section (1)(d) on Page 1 of the legislation that requires sellers of residential real property to disclose any known information that shows elevated concentrations of radon gas in the property. Existing law already obligates both sellers and real estate licensees to provide any known information concerning radon gas to buyers in all real estate transactions.

KAR Supports the Certification of Individuals Who Test For and Mitigate Radon Gas, But the Legislation Does Not Place a Statutory Cap on the Certification Fees That Can Be Charged

Sections 3 through 9 would require all individuals who conduct radon gas testing or mitigation to be certified by the Kansas Department of Health and Environment (hereinafter "KDHE"). During the hearing on this legislation in the Senate Federal and State Affairs Committee, KAR testified that we were concerned that the legislation did not contain more specific requirements that an individual must fulfill in order to become certified under this act.

Instead, KDHE would have been granted essentially unlimited authority to adopt rules and regulations to establish certification requirements under this act. As with nearly all other regulated professions and occupations in this state, any requirements for certification under this act need to be specifically established by the Kansas Legislature and specified in the enabling legislation.

In response to these concerns, the Senate committee adopted an amendment proposed by KDHE that added more specific certification requirements into the text of the legislation. KAR strongly supports the inclusion of this additional language in the legislation

However, when this legislation was worked by the Senate Federal and State Affairs Committee, the committee adopted an amendment by voice vote that allowed KDHE to set the certification fees through rules and regulations rather than by statute. As has been the custom with other professions regulated by the state, these fees need to be capped in statute to ensure that the certification fees charged under this act are not excessive.

KAR Has Concerns That KDHE Would Be Given Broad Authority Under the Current Language; Clarification Needed to Ensure They Do Not Adopt Permissible Levels for Radon Gas in Residential Structures That Conflict With Federal Guidelines

In addition, KAR is concerned with the very broad authority granted to KDHE under this legislation as it is currently written. Under this language, we are very concerned that KDHE would have the authority to adopt and enforce standards that would determine the acceptable or permissible level of radon gas concentrations in residential structures.

Recommended guidelines for radon gas concentrations in residential structures are currently developed and issued by the United States Environmental Protection Agency. We would be very concerned if KDHE were to adopt standards or guidelines that would be more stringent or vary from these guidelines. In order to ensure that this does not happen, we would urge the committee to add the following language to the legislation:

“The Kansas department of health and environment has no authority to adopt or enforce standards or guidelines that determine the acceptable or permissible level of radon gas concentrations in residential structures.”

Proposed Language in Section 7 Would Require the Results of All Radon Tests and Radon Reports to Be Filed with KDHE; These Requirements Would Be Extremely Burdensome and It is Unclear on How This Information Will Be Utilized

Finally, Section 11 on Page 6 of the legislation would require any individual who tests for radon gas, analyzes radon testing devices or performs radon mitigation to submit a report detailing the test, analysis or mitigation to KDHE within 30 days of the performance. While the legislation does state that this information would not be subject to disclosure under the open records act, we think it is entirely inappropriate to require the disclosure of the confidential results of a radon test to a state agency.

When a homeowner engages a certified radon measurement technician to perform a radon test on their home, they anticipate that this professional will act on their behalf and will not release the information derived from that test to third parties without their consent. The homeowner is the owner of all information derived from a home inspection, termite inspection, radon test and any other inspection or examination of the dwelling.

Unless the homeowner consents to the transfer of this information, the results of all radon tests should be confidential and be under the sole control of the homeowner. It is entirely inappropriate to violate this confidentiality by forcing the homeowner to submit a copy of their private test results to a state agency or other third party.



**STATEMENT OF THE
KANSAS BUILDING INDUSTRY ASSOCIATION**

**TO THE HOUSE COMMERCE COMMITTEE
REPRESENTATIVE STEVE BRUNK, CHAIR**

REGARDING S.B. 577

MARCH 19, 2008

Chairman Brunk and Members of the House Commerce Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). Our more than 2500 member companies are involved in the state's residential housing and commercial construction industry. We oppose S.B. 577. Several improvements to the bill were made in the Senate, but we especially have concerns about the broad statutory authority provided in the bill to the Secretary of Health and Environment.

This bill does not set maximum fee levels, as is customary with regulatory fees. It also would permit the state agency to set standards for radon. This is unnecessary because the federal government has exercised authority in this area, having developed a great deal of expertise and research concerning radon. To attempt to recreate this at the state level would be duplicative, costly, and wasteful.

Also, there is certification of radon inspectors and mitigators provided by two national entities. KDHE will, under this bill, automatically certify those who have been certified at the national level. This is dual licensure and we're not clear that it does more than create more expense for the person having the testing done and create more bureaucracy at the state level.

Radon is a radioactive by-product of naturally decaying uranium. It is an odorless, tasteless, and colorless gas found in some soils, rock, groundwater, and building materials. It is constantly released into the air. Radon levels vary widely across the country and even within small geographic areas such as

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counties. Radon can enter buildings through cracks in the foundation and may accumulate within the buildings if there is no way to vent the gas back into the outside air. In the past, radon has received widespread coverage in the media.

The good news is that radon is something that is easily tested for and relatively easily mitigated. Radon is most present at the lowest living level of the home and is affected by ventilation.

Homebuilders today are building to the International Building Code, which provides for installation of radon mitigation measures when a home is constructed, depending on the zone they are building in. This is enforced and inspected at the local level.

The Environmental Protection Agency (EPA) worked in collaboration with stakeholders to develop its Model Construction Standards & Techniques for Control of Radon in New Residential Construction. In this model, EPA identified two types of standards that could be incorporated into homes to reduce radon levels - passive and active. Both have different effects and costs. Passive standards are less costly and research has shown that passive standards are adequate in most parts of the country. The passive standards have been available for voluntary adoption in the Council of American Building Officials, One and Two Family Dwelling Code (CABO OTFDC) since 1994. Active standards are more expensive and typically used in homes where radon levels exceed 4 picocuries per liter or where passive systems have failed.

We believe that the radon issue is being well-addressed nationally and in Kansas through the implementation of radon-resistant techniques in new homes; testing and mitigation; education; disclosure in the real estate transaction. In the real estate transaction process, radon should be treated similarly to other environmental issues such as mold and lead-based paint. This meets the need for disclosure and consumer education and provides for testing and negotiation between buyer and seller without an unfunded mandate that is not required or desired by either.

This bill addresses new construction, which is most likely to have radon mitigation in place, and yet doesn't address multi-family housing or housing for the aging. If there's a population that has heightened exposure to radon, it would be those in homes for the aging where they are in the facility a large percentage of the time.

Any standards should be based on sound scientific studies, be cost-effective and be implemented through the model code process. State laws should eliminate liability when homes are built to these model code standards.

Kansas does not have a statewide building code, because the codes are adopted at the local level, to provide for local climate and other differences.

We support voluntary use of residential radon construction standards in building codes, statutes, or regulations.

In conclusion, we support the efforts of Senator Barnett to provide for disclosure to the public concerning radon. We would support amendments offered by the Kansas Association of Realtors to improve the legislation by placing some limits on the authority and fees of KDHE.

Thank you for the opportunity to comment regarding S.B. 577.

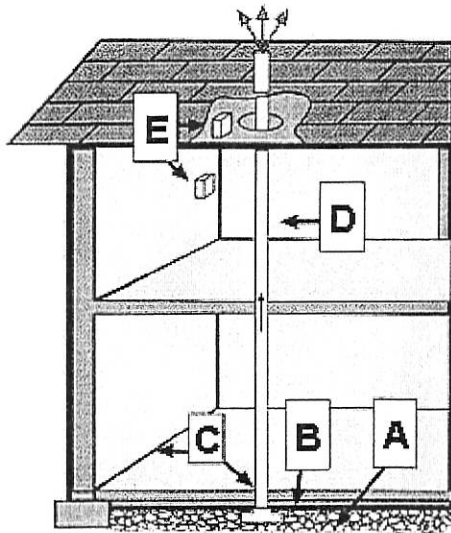
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Radon-Resistant New Construction

- These construction techniques help block radon from entering the home. The occupants will benefit from lower radon levels in their new home.
- They are easy to upgrade when there is a need to increase the radon reduction.
- If high radon levels are found, the techniques allow for easy and inexpensive installation of a fan for increased radon reduction in the home. Every new home should be tested for radon by the homeowner after occupancy.
- They are cost-effective for home buyers
- It is more cost-effective to include radon-resistant techniques while building a home, rather than installing a radon reduction system in an existing home.
- For example:
 - Materials and labor costs for Radon-Resistant Techniques vs. Retrofitting an Existing Home is \$350 - \$500 vs. \$800 - \$2,500 (*a 128% to 400% saving!*)
- Some construction companies successfully use this as a marketing advantage.
- They may improve the home's energy-efficiency.
- Radon-resistant construction techniques are consistent with state-of-the-art energy-efficient construction. When using these techniques, follow the Model Energy Code (or other applicable energy codes) for weatherization, which will result in energy savings and lower utility bills.

What are Radon-resistant construction techniques?

The techniques may vary for different foundations and site requirements, but the basic elements are:



A. Gas Permeable Layer

This layer is placed beneath the slab or flooring system to allow the soil gas to move freely underneath the house. In many cases, the material used is a 4-inch layer of clean gravel.

B. Plastic Sheeting

Plastic sheeting is placed on top of the gas permeable layer and under the slab to help prevent the soil gas from entering the home. In crawlspaces, the sheeting is placed over the crawlspace floor.

C. Sealing and Caulking

All openings in the concrete foundation floor are sealed to reduce soil gas entry into the home.

D. Vent Pipe

A 3- or 4-inch gas-tight or PVC pipe (commonly used for plumbing) runs from the gas permeable layer through the house to the roof to safely vent radon and other soil gases above the house.

E. Junction Box

An electrical junction box is installed in case an electric venting fan is needed later.

How Many Homes Are Built With Radon-Reducing Features?

Based on an annual home builder survey conducted by the National Association of Home Builders (NAHB) Research Center:

- 5.8% of approximately 1,124,000 single-family detached homes built during 2001 incorporated radon-reducing features, which translates to about 65,000 homes. This brings the cumulative total of single-family detached homes built with

radon-reducing features since 1990 to over one million homes.

- 11.7% of approximately 255,000 single-family detached homes built in Zone 1 (homes with high radon potential) during 2001 incorporated radon-reducing features, which translates to nearly 30,000 homes. This brings the cumulative total of single-family detached homes built in Zone 1 with radon-reducing features since 1990 to over 600,000 thousand.*

* These results exclude homes built on pier-style foundations.



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Testimony House Commerce Committee

TO: Representative Steve Brunk, Chairman
And Members of the Committee

FROM: Martha Neu Smith
Executive Director

DATE: March 19, 2008

RE: Sub.SB 577 – Radon Awareness Law and Radon Certification Law

Chairman Brunk and members of the Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment on SB 577.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transporters.

KMHA has two concerns with Sub. SB 577. Our first concern is the broad authority this bill gives the Secretary of Health and Environment. There is nothing in the bill that would prevent the Secretary from adopting or enforcing standards that determine the acceptable or permissible level of radon gas in residential structures. Our second concern is that all of the fees were removed from the bill and they are to be determined through the rule and regulation process.

I did speak to Senator Barnett and Kim Steves with Kansas Department of Health and Environment about both of these issues and they seemed to be open to amending the bill to address both concerns.

KMHA supports the amendments offered by Kansas Association of Realtors addressing these concerns. Thank you again for the opportunity to comment.

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