

# ASSEMBLY, No. 4134

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 10, 2007

**Sponsored by:**

Assemblyman **LOUIS D. GREENWALD**

District 6 (Camden)

Assemblyman **WILLIAM D. PAYNE**

District 29 (Essex and Union)

**Co-Sponsored by:**

Assemblyman **Cryan**

**SYNOPSIS**

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.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/22/2007)

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

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8

9 1. The Legislature finds and declares that:

10 a. Radon is a naturally occurring radioactive gas, found in soil  
11 everywhere in varying concentrations throughout the State, that can  
12 move easily through soil and tiny cracks in rock, and when it  
13 reaches the surface of the soil, it disperses and is diluted to very low  
14 levels in the outdoor environment.

15 b. When radon gas moves upward through soil beneath a  
16 building, it may enter through cracks or other openings in the  
17 foundation and build up to unacceptable levels, but its presence,  
18 even in high concentrations, cannot be detected by human senses  
19 because the gas is invisible and has no odor.

20 c. In New Jersey, there is a particularly uranium-rich geological  
21 formation, called the Reading Prong, which stretches from  
22 Pennsylvania through northwestern New Jersey into southern New  
23 York State, and the testing of homes built along this geologic  
24 formation has revealed high indoor levels of radon gas; and further  
25 testing in New Jersey, beyond the Reading Prong area, has shown  
26 additional areas where homes have elevated radon levels.

27 d. Long term or chronic exposure to radon has been linked to  
28 lung cancer, and the greater the concentration and the longer a  
29 person is exposed, the greater the health risk; and, therefore, it is  
30 appropriate to require radon testing in order to protect public health.

31

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

41 b. The Commissioner of Education, in consultation with the  
42 Department of Environmental Protection, shall determine the extent  
43 of testing required and the locations for the testing, provided that at  
44 least every building used as a school in which a child care center is  
45 operated by a nonprofit organization is tested by the school in  
46 which the child care center is operated for the presence of radon gas  
47 or radon progeny at least once every five years.

48 The local school board of each school district, the board of

1 trustees of each charter school, and the principal or chief  
2 administrator of each private school, respectively, in consultation  
3 with the Department of Environmental Protection and the principal  
4 of each school to be tested, shall determine the buildings to be  
5 tested, the locations within each building to be tested, the method of  
6 testing, and the procedures concerning notification and circulation  
7 of the testing results.

8 c. As used in this section:

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

11 "School" means any public or private school as defined in  
12 N.J.S.18A:1-1.

13

14 3. a. Every contract of sale of residential real property shall  
15 include a provision requiring the seller, as a condition of the sale, to  
16 test for radon gas and radon progeny in the dwelling, and mitigate  
17 any radon contamination when levels test at or above four  
18 picocuries per liter.

19 (1) Testing and mitigation shall be performed by persons  
20 certified by the Department of Environmental Protection to provide  
21 those services, in accordance with P.L.1986, c.83 (C.26:2D-70 et  
22 seq.) and appropriate department protocols.

23 (2) When levels of radon contamination test at or above four  
24 picocuries per liter, a copy of the radon test results and plans for  
25 subsequent remediation shall be submitted to the county health  
26 department, health agency, or designated health officer.

27 (3) Closing of title on the sale of residential real property shall  
28 not occur unless both the buyer and the seller have received and  
29 reviewed a copy of the radon test results, and mitigation, if  
30 required, has been performed, pursuant to this subsection. At  
31 closing, the buyer and seller both shall certify in writing that they  
32 have received and reviewed the radon test results and the mitigation  
33 plan, if mitigation is required.

34 b. Within 18 months after the effective date of this act, and at  
35 least once every five years thereafter, the lessor of any residential  
36 real property, shall test for radon gas and radon progeny in each  
37 rental building and shall mitigate any radon contamination when  
38 levels test at or above four picocuries per liter.

39 (1) Testing and mitigation shall be performed by persons  
40 certified by the department to provide those services, in accordance  
41 with P.L.1986, c.83 (C.26:2D-70 et seq.) and appropriate  
42 department protocols.

43 (2) When levels of radon contamination test at or above four  
44 picocuries per liter, a copy of the radon test results and plans for  
45 subsequent remediation shall be submitted to the county health  
46 department, health agency, or designated health officer.

47 (3) Within 30 days after receipt of the results of the test  
48 conducted pursuant to this subsection, the lessor shall provide a

1 written copy thereof to each rental unit on the property, and  
2 notification that mitigation is required when radon contamination  
3 tests at or above four picocuries per liter. The lessor shall also  
4 provide a written report of the most recent test results and  
5 mitigation performed to any new lessee of a rental unit on the  
6 property.

7 c. The Department of Environmental Protection shall adopt,  
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
9 (C.52:14B-1 et seq.), any rules or regulations necessary to  
10 implement the provisions of this section.

11

12 4. Section 3 of P.L.2000, c.122 (C.18A:20-40) is repealed.

13

14 5. This act shall take effect immediately.

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16

17

#### STATEMENT

18

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

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

32 The Council on Local Mandates, in a decision dated August 20,  
33 2004, found that section 3 of P.L.2000, c.122 (C.18A:20-40), which  
34 required public school buildings to be tested for the presence of  
35 radon gas once every five years, constituted an unfunded mandate  
36 in violation of Article VIII, Section 2, paragraph 5 of the New  
37 Jersey Constitution. The council declared that the statute ceased to  
38 be mandatory in its effect and expired.

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

43 In addition, this bill would require the seller of residential real  
44 property, as a condition of sale, to test for radon gas and radon  
45 progeny in the dwelling and to perform mitigation when the radon  
46 contamination is equal to or greater than four picocuries per liter. A  
47 seller would be required to submit a copy of the radon test results  
48 and remediation plans to the county health department, health

1 agency, or designated health officer prior to mitigation of  
2 contamination. All testing and mitigation would be required to be  
3 performed by persons certificated by the DEP, and in compliance  
4 with department protocol. This bill would also prohibit closing on  
5 the sale of residential property unless both the buyer and seller have  
6 received and reviewed a copy of the radon test results and a copy of  
7 any remediation plan, and the mitigation, if required, has been  
8 performed.

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

21 P.L.1997, c.44 (C.30:5B-5.2) requires that all licensed child care  
22 centers must be tested for the presence of radon at least once every  
23 five years. This bill does not change that requirement of current  
24 law.