

Memorandum



October 17, 2022

To: County Council

From: Maryland Chapter of the American Association of Radon Scientists and Technologists (AARST)

Subject: Bill 26-22 Landlord – Tenants Relations – Radon Testing and Mitigation – Required

The MD AARST Chapter is composed of individuals with a wealth of Radon testing and mitigation experience; in Montgomery County, Maryland, and nationwide; as well as participating in professional committees for the development of professional standards for the radon industry: standards development committees including the participation of practitioners, various state regulatory representatives, EPA representatives, and other stakeholder representatives.

The Maryland Chapter of AARST supports Bill 26-22 but with the suggested amendments below:

1) 29-35E. Radon Testing, (a) *Definitions, Mitigation*

Existing: *Mitigation* means measures designed to permanently reduce indoor radon concentrations.

Revised: *Mitigate/Mitigation* means measures designed to permanently reduce indoor radon concentrations. Mitigation shall be conducted in compliance with the most current EPA-recommended standards for the subject building type, and by a certified radon professional.

Explanation: On the U.S. EPA website (<https://www.epa.gov/radon/radon-standards-practice>), current Radon Standards of Practice are referenced and attached which provide detailed standards for conducting mitigation of single-family and multifamily buildings (whether rental or other). By referencing EPA recommended standards, the bill can be simplified, and present or future conflicts (due to various written standards) can be avoided.

2) 29-35E. Radon Testing, (a) *Definitions, Radon test*

Existing: *Radon test* has the same meaning as in Section 40-13C(a).

Revised: *Radon test* has the same meaning as in Section 40-13C(a) with the addition of the following. Testing shall be conducted in compliance with the most current EPA-recommended testing standards for the subject building type, and by a certified radon professional.

Explanation: On the U.S. EPA website (<https://www.epa.gov/radon/radon-standards-practice>), current Radon Standards of Practice are referenced and attached which provide detailed standards for conducting testing of single-family and multifamily buildings (whether categorized as rental or otherwise). By referencing EPA recommended standards, the bill can be simplified, and present or future conflicts can be avoided (due to various written standards).

3) 29-35E. Radon Testing, (b) *Applicability*.

Existing: (b) *Applicability*. This Section applies to any rental housing that has a unit below the third floor of a residential building in:

(1) a single-family home; or



(2) a multifamily dwelling unit.

Revised: (b) *Applicability.* This Section applies to any rental housing that is:

(1) a single-family home; or

(2) a multifamily dwelling unit.

Explanation: Where to test in a single-family and multifamily building does not need to be defined or clarified because testing locations are defined in the standards that are present on the U.S. EPA website (<https://www.epa.gov/radon/radon-standards-practice>). For example, regarding multifamily buildings, there is a detailed explanation of what floors and apartments to test depending on contact with the ground and other building design attributes. By referencing EPA-recommended standards, the bill can be simplified, and present or future conflicts can be avoided (due to various written standards).

4) 29-35E. Radon Testing, (d) *Lease requirements.* (2)

Existing: (2) the test was performed less than three (3) years before the date the lease; and

Revised: (2) the test was performed within the stipulated period in EPA recommended standards; and

Explanation: How recently the test was performed does not need to be specified here because the frequency of testing of buildings (mitigated buildings every 2 years, and un-mitigated buildings every 5 years) is already defined in the EPA recommended testing standards referenced in the updated definition of *Radon test* above. By referencing EPA-recommended standards, the bill can be simplified, and present or future conflicts can be avoided (due to various written standards).

5) 29-35E. Radon Testing, (e) *Testing and notification by existing tenants.*

Existing: (e) *Testing and notification by existing tenants.* An existing tenant may conduct a radon test in the dwelling unit covered by this Section. If the test results indicate that radon hazard is present at a level of 4 pCi/L or higher, the tenant must:

(1) in writing; and

(2) within 14 days of the test results, notify the landlord.

Revised: (e) *Testing and notification by existing tenants.* An existing tenant may conduct a radon test in the dwelling unit covered by this Section. This test is not to be used to meet the required testing in section 29-35E, (c). If the test results indicate that a radon hazard is present at a level of 4 pCi/L or higher, the tenant must:

(1) in writing; and

(2) within 14 days of the test results, notify the landlord.

Explanation: Testing by a tenant is governed by different EPA recommended standards than testing by a professional. The accuracy and precision of the test result are very uncertain since the tester is not trained, and the test is not subject to any quality assurance/control procedures. As such, it is not recommended that the result be used as the sole determinator of whether to mitigate the residence. The test, performed by an untrained person, should not be relied upon to protect the health and safety of others. Since these test results will be confirmed or challenged during a retest by the landlord (whose test shall be conducted by a professional), procedures are also recommended for resolving the dispute between differing test results.



6) 29-35E. Radon Testing, (f) *Mitigation of Radon*, (2)

Existing: (2) within 90 days of confirmed results, mitigate, repair, or alter the premises to reduce the radon level to 2 pCi/L or below.

Revised: (2) within 90 days (short-term testing) or 180 days (long-term testing) of confirmed results, mitigate the premises.

Explanation: If initial test results are equal to or greater than 8.0 pCi/L, EPA recommends short-term follow-up testing and not long-term testing. If initial testing is less than 8.0 pCi/L, retesting can be short- or long-term; and long-term testing does capture a larger percentage of the annual exposure and is a better representation of the annual exposure.

EPA recommends mitigation of the residence if results are equal to or greater than the EPA Action level of 4.0 pCi/L. EPA does not recommend repair or alteration of the premises to reduce radon. Mitigation is defined, with all available options, within the EPA recommended standards. Since these standards are referenced in the definition of mitigation for this bill, there is no need to define or describe mitigation options here.

Mitigation being required to <2.0 pCi/L vs <4.0 pCi/L, from the experience of members of the MD AARST Chapter, is cost-prohibitive to achieve in a small percentage of all mitigation events.

7) 29-35E. Radon Testing

Insert the following section after (f) *Mitigation of Radon*, (2):

Insert: (g) Dispute of testing results – In case of conflicting test results:

- (1) Testing performed in compliance with the EPA-recommended standard, by a radon professional (for hire) shall supersede tests not performed by a radon professional.
- (2) If both tests are performed by radon professionals, long-term testing results shall supersede short-term test results.
- (3) If both tests are of equal weighting per (1) and (2) above, a mutually agreed third-party radon professional shall retest in accordance with EPA-recommended standards.

Explanation: Since there may be a dispute between a tenant's test result and the test result from a landlord or other radon professional, procedures are recommended for resolving the dispute.