

MEMORANDUM

July 10, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 31-15, Sale of Real Property – Radon Test – Single-family home

Bill 31-15, Sale of Real Property – Radon Test – Single-family home, sponsored by Lead Sponsors Councilmembers Rice and Katz, was introduced on June 16, 2015. A Transportation, Infrastructure, Energy and Environment (T&E) Committee worksession is tentatively scheduled for July 20 at 9:30 a.m.

Background

Radon is a radioactive gas found in the air that comes from the natural breakdown of uranium in soil, rock, and water. High levels of radon can cause serious illnesses and often occur in single family homes in the County. Although radon remediation from a single family home is possible, many people purchase a home without knowing if high levels of radon exist in the home. Radon is already listed as one of the hazardous materials that a seller must disclose to the buyer of a single-family home if the seller has actual knowledge of its existence under State law. See, Md. Code Ann., Real Prop. §§10-702, 10-603, and 10-604. As the County Attorney's Office pointed out, State law does not create an affirmative duty for the seller to discover if radon exists in the house. See the County Attorney Bill Review Memorandum at ©4-5.

Bill 31-15 would complement State law by requiring the seller of a single-family home to test for radon and give the buyer a copy of the radon test results. It would also require the seller to provide the buyer with an estimate to reduce radon under certain circumstances.

This packet contains:

Bill 31-15
Legislative Request Report
County Attorney Bill Review Memorandum

Circle #

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Bill No. 31-15
Concerning: Sale of Real Property –
Radon Test – Single-family home
Revised: June 16, 2015 Draft No. 2
Introduced: June 16, 2015
Expires: December 16, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Rice and Katz

AN ACT to:

- (1) require the seller of a single-family home to test for radon and give the buyer a copy of the radon test results;
- (2) require the seller to provide the buyer with an estimate to reduce radon under certain circumstances; and
- (3) generally amend the law governing the sale of a single-family home in the County.

By adding

Montgomery County Code
Chapter 40, Real Property
Section 40-13C

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 40-13C is added as follows:

40-13C. Radon test – single-family home.

(a) Definitions. In this Section, the following words have the meanings indicated:

Department means the Department of Environmental Protection.

Director means the Director of the Department or the Director's designee.

Single-family home means a single-family detached or attached residential building.

Radon means a radioactive gas found in the air that comes from the natural breakdown of uranium in soil, rock, and water.

Radon test means measuring the amount of radon in an indoor space with a kit made for this purpose and approved for use by the Director.

(b) Before signing a contract for the sale of a single-family home located in the County, the seller must provide the buyer with:

(1) a copy of the results of a radon test performed on the living quarters of the home less than one year before the date of the contract; and

(2) an estimate from a licensed contractor to reduce any radon level of 4 picocuries per liter or more to less than 2 picocuries per liter.

Approved:

George Leventhal, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 31-15

Sale of Real Property – Radon Test – Single-family home

DESCRIPTION:	Bill 31-15 would require the seller of a single-family home to test for radon and give the buyer a copy of the radon test results. It would also require the seller to provide the buyer with an estimate to reduce radon under certain circumstances.
PROBLEM:	Radon is a radioactive gas found in the air that comes from the natural breakdown of uranium in soil, rock, and water. High levels of radon can cause serious illnesses and often occurs in single family homes in the County. Although radon remediation from a single family home is possible, many people purchase a home without knowing if high levels of radon exist in the home.
GOALS AND OBJECTIVES:	Ensure that a buyer of a single family home in the County learns if the house contains high levels of radon before purchasing it.
COORDINATION:	Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.



Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

MEMORANDUM

July 7, 2015

To: Lisa Feldt, Director
Department of Environmental Protection

From: Walter Wilson
Associate County Attorney

Via: Edward Lattner, Chief
Division of Government Operations

Re: Bill 31-15 (Sale of Real Property—Radon Test—Single-family home)

The County Executive's Office has requested that this office forward you our comments concerning Bill 35-15. The proposed legislation would amend County law by adding radon testing results to the current list of mandatory disclosures under Article III of Chapter 40 that apply to persons selling residential properties in the County. Bill 35-15 would require that a seller, before signing a contract for the sale of a single-family home, provide the buyer with the results of a radon test that has been performed not more than one year before the date of that contract. If those test results indicate the presence of radon at levels of at least 4 picocuries per liter then the seller must also deliver to the buyer an estimate, prepared by a licensed contractor, of the cost of radon remediation to a level below 2 picocuries per liter.

Radon is already listed among the hazardous materials that state law requires a seller to disclose to the buyer of a single-family home along with other defects of which the seller has actual knowledge before entering into a sales contract. *See* Md. Code Ann., Real Prop. § 10-702 (e) (2) (vii) ("Single family homes; mandatory disclosures"). *See also*, Md. Code Ann., Real Prop. §§ 10-603 (a) (1) (iii) ("Disclosures required for unwarranted homes") and 10-604 (b) (2) (i) ("New home warranty provisions"). However, state law does not place upon the seller an affirmative duty to discover the extent to which radon may be present in a single-family home before executing a contract of sale for that home. Bill 35-15 seeks to remedy that by ensuring that if high levels of radon are present in a single-family home, a purchaser will always be informed about it before the sales contract is signed and also have some idea of how expensive it

Lisa Feldt
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will be to attenuate the problem.

Having reviewed Bill 31-15, I find that the legislation, as introduced, appears legally sound and does not conflict with any provisions under state law that also impose disclosure requirements upon sellers of single-family homes. There are no specific substantive changes that I recommend. However, the one editorial change I would suggest is that "of the cost" be inserted after "contractor" at line 16. If you have any questions or concerns regarding this memorandum, please call me at (240) 777-6759.

cc: Bonnie Kirkland, Office of the County Executive
Marc P. Hansen, County Attorney
Robert H. Drummer, Senior Legislative Attorney