Approved: 4/2/08
Date

## MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:15 A.M. on March 19, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused Broderick Henderson- excused

Candy Ruff- excused

Charles Roth- excused

Kasha Kelley- excused

Mike Kiegerl- excused

Ronnie Metsker- excused

Terrie Huntington- excused

# Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department Jill Wolters, Office of Revisor of Statutes Renae Jefferies, Office of Revisor of Statutes Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Senator James Barnett

Kimberly Stevens, Kansas Department of Health and Environment

Gary Hodgden, Midwest Radon

Roger Dahlby, Advanced Environmental Services Inc.

Others attending: See attached list.

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

Renae Jefferies gave an overview of Sub for SB 577 (Attachment 1).

Senator Barnett presented his testimony in support of **Sub for SB 577 (Attachment 2)**.

Representative Gordon asked Senator Barnett how they knew that lung cancer deaths were caused by radon instead of second hand smoke. Senator Barnett said that those statistics had not been taken but that Kansas does have a high level of radon throughout the state.

Kimberly Steves gave her testimony in favor of Sub for SB 577 (Attachment 3).

Kimberly also offered an amendment (Attachment 4) that would prevent the department from setting standards that are more stringent than the federal or ASTM standards and also set the maximum fees that the secretary may impose and collect.

Gary Hodgden voiced his support for Sub for SB 577 (Attachment 5).

Roger Dahlby presented testimony in support of **Sub for SB 577 (Attachment 6)**.

Representative Gordon said that it would be interesting to know how many deaths are from lung cancer and how long we have been aware of the danger from radon.

Representative Goico asked how much a radon test costs. Kimberly replied that a do it yourself kit cost \$5 at the county extension offices, up to \$20 at a hardware store and requires lab results which take about two weeks. A contractor might charge \$75 to \$100 but give results in about 48 hours..

The Chairman closed the hearing and announced that the hearing would continue tomorrow. The committee was adjourned at 9:50 AM.

# COMMERCE & LABOR COMMITTEE DATE: 3-19-08

NAME	REPRESENTING
BALL SMEAD	KSU for KOME
Brian Hanson	KSU FOR KDHE
Kim Steves	KOHE
Tom Conley	KDEF
Gary Hodgden Roger Dahlby	AATA Professionals, INC-
Roger Dahlby	Advanced Environmental Services Inc.
Luke Bell	KS ASSOC. OF REALTORS
Gartha Sou mille	KMHA
Chris Wilson	Ks Berilding Industry Assn
Ander Sarcher	KS AF2-010
Kim Steves	KONE



# Office of Revisor of Statutes 300 S.W. 10<sup>th</sup> Avenue Suite 010-E, Statehouse Topeka, Kansas 66612-1592 Telephone (785) 296 -2321 FAX (785) 296-6668

## **MEMORANDUM**

To:

House Committee on Commerce and Labor

From:

Renae Jefferies, Assistant Revisor

Date:

March 19, 2008

Subject:

Senate Bill No. 577

SB 577 contains two laws, the Radon Awareness Law and the Radon Certification Law.

Section 1 of the bill establishes the Radon Awareness Law under which a contract for the sale of residential real property would have to contain language notifying the buyer that the property may contain radon gas; warning of the risks of cancer from exposure to radon gas; and the recommending that the buyer test for radon gas using a certified radon measurement technician and use a certified radon mitigation technician to reduce any radon exposure. A seller would have to disclose any information and reports known to the seller regarding an elevated level of radon gas on the property. Additionally, the seller and buyer, in the contract for sale, must acknowledge that such information has been disclosed. Subsection (e) of this section lists a number of court-ordered real estate transfers and other transfers that would be exempt from the requirements of this section.

Sections 3 through 12 of the bill contain the provisions of the Radon Certification Law. Section 3 sets out the definitions for the act.

Sections 4 and 5 provided that the Secretary of the Department of Health and Environment (Secretary) shall:

- Establish a certification program for persons performing radon tests or mitigating radon in the state;
- adopt rules and regulations to carry out the purposes of the law;
- employ necessary personnel to carry out the provisions of the law;

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- enter into agreements with public or private agencies for the implementation of the law;
- fix and impose fees for the initial certification and annual renewal of such
  certifications required under the Radon Certification Law; and
  may, after notice and a hearing, deny, suspend or revoke a certification for violation of any
  provision of the Radon Certification Law or any rule or regulation adopted thereunder.

Money's collected from fees shall be credited to the radiation control operations fee fund.

Section 6 provides that a person may not perform radon measurement tests or represent or advertise that such person may perform such tests unless the person is certified as a radon measurement technician. To be certified the applicant within one year of submission of the application for certification must have completed a training course and passed an examination on radon measurement approved by the KDHE. Applicants who are certified by the national environmental health association or the national radon safety board on July 1, 2008 and who have performed the duties of a radon measurement technician for at least one year prior to July 1, 2008, and who have completed an approved training course and passed an examination at any time prior to July 1, 2008, shall be deemed to have met the requirements for certification. A person who performs radon measurement tests on a building the person owns or resides in or who provides the tests for free does not have to be certified.

Section 7 provides that a person may not perform radon mitigation or represent or advertise that such person performs radon mitigation unless the person is certified as a radon mitigation technician. To be certified the applicant within one year of submission of the application for certification must have completed a training course and passed an examination on radon mitigation approved by the KDHE. Applicants who are certified by the national environmental health association or the national radon safety board on July 1, 2008 and who have performed the duties of a radon mitigation technician for at least one year prior to July 1, 2008, and who have completed an approved training course and passed an examination at any time prior to July 1, 2008, shall be deemed to have met the requirements for certification. A person who performs radon mitigation on a building the person owns or resides in or who provides the radon mitigation for free does not have to be certified.

Section 8 provides provides for the certification of a radon measurement business and makes it unlawful for a person to operate, represent or advertise that a person is in the radon

measurement business without such certification. All radon testing, including initial placement and retrieval of all measurement devices and post-mitigation testing, must be performed by a radon measurement technician.

Section 9 provides for the certification of a radon mitigation business and makes it unlawful for a person to operate, represent or advertise that a person is in the radon mitigation business without such certification. All radon mitigation systems installations must be performed under the supervision of a radon mitigation technician.

Section 10 provides for the certification of an approved radon measurement laboratory and makes it unlawful for a person to perform laboratory analysis or represent or advertise that the person may perform laboratory analysis of radon measurement devices or samples without such certification. Designation as an approved radon measurement laboratory is not transferable.

Section 11 requires that any person who tests for radon, analyzes radon test samples or performs radon mitigation services file a report with KDHE within 30 days. The contents of the report would be confidential and not subject to the Kansas Open Records Act. The Secretary may conduct research studies utilizing the data from the reports but no report or publication shall state the names or addresses of individuals.

Section 12 creates penalties for violations of the Radon Certification Law which would be a class C nonperson misdemeanor for the first offense and a class B nonperson misdemeanor for subsequent offenses. In addition, the Secretary may impose a fine not to exceed \$10,000 for violations of the law with continuing violations counted as a separate violation for each day the violation continues. All moneys collected from fines imposed shall be deposited in the state general fund.

At the request of the Secretary, the Attorney General is authorized to institute a civil action to collect any fine imposed pursuant to this section.

Section 13 amends K.S.A. 48-1625 to allow fees collected under section 5 of the Radon Certification Law to be deposited in the radiation control operations fee fund and to allow expenditures from the fund for the costs of administering the Radon Certification Law and the Radon Awareness Law.

The bill takes effect upon publication in the statute book.

#### STATE OF KANSAS

## JIM BARNETT

SENATOR, 17TH DISTRICT CHASE, COFFEY, GREENWOOD LYON, MARION, MORRIS, AND OSAGE COUNTIES



**COMMITTEE ASSIGNMENTS** 

CHAIR: SENATE PRESIDENTS TASK FORCE ON

HEALTH CARE

CHAIR: PUBLIC HEALTH AND WELFARE

CHAIR: KANSAS HEALTH POLICY AUTHORITY **OVERSIGHT COMMITTEE** 

MEMBER: FINANCIAL INSTITUTIONS AND

INSURANCE

HEALTH CARE STABILIZATION FUND ORGANIZATION, CALENDAR AND RULES

FEDERAL AND STATE AFFAIRS

Testimony to House Commerce and Labor Committee Sub SB 577 – Radon awareness law and radon certification program Wednesday, March 19, 2008 9:15am - Room 784 - Docking Building

Chairman Brunk and other distinguished members of the House Commerce and Labor Committee, thank you for the opportunity to speak in support of SB 577.

Last year, I was contacted by the family of E. Juanita Donelson related to her death from lung cancer. Mrs. Donelson developed lung cancer and was told by her oncologist that she had a classic case of radon-induced cancer of the lung. This delightful lady had a pattern of spending a number of hours in her basement quilting. After diagnosis and the information from her oncologist, her home was tested for radon and was found to be elevated to a dangerous level.

That story has prompted the development and introduction of SB 577. Radon is the leading cause of lung cancer in people who have never smoked. By conservative estimates, 200 Kansans die every year from radon-induced lung cancer.

The legislation would initially help home buyers across our state become knowledgeable about the presence and risks of radon. Additionally, individuals would learn the possibilities of mitigation to reduce the risk of cancer. The bill would require certification of those actually performing testing.

I consider this to be a very significant public health issue. As we make efforts to improve the health of Kansans and promote prevention, Senate Bill 577 will provide one additional opportunity to protect the health and wellbeing of our citizens.

Senator Jim Barnett

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DISTRICT OFFICE 1301 W. 12TH AVE., STE. 202 EMPORIA, KS 66801 620-342-2521 HTTP://WWW.KSLEGISLATURE.ORG/JBARNETT

House Commerce & Labor Date: Attachment #



DEPARTMENT OF HEALTH AND ENVIRONMENT

Kathleen Sebelius, Governor Roderick L. Bremby, Secretary

www.kdheks.gov

Division of Environment

Testimony on Substitute for Senate Bill No. 577 An Act enacting the radon awareness law and the radon certification law

Presented to
Commerce and Labor Committee
By
Kimberly Steves
Supervisor, Environmental Radiation, Emergency Preparedness, and Right-To-Know

March 19, 2008

Chairman Brunk and members of the committee, my name is Kim Steves and I am the Supervisor of the Kansas Radon Program at the Department of Health and Environment. Thank you for the opportunity to provide testimony in support of Substitute for Senate Bill 577 concerning the creation of a Radon Awareness Law and a Radon Certification Law.

Radon is a colorless, odorless, tasteless, radioactive gas, which comes from uranium in the soil. Radon is everywhere in the environment, and when entering homes and other buildings, builds up to higher concentrations. Radon is the second leading cause of lung cancer after cigarette smoking. It is the first leading cause of lung cancer in individuals who have never smoked. In Kansas, there are over 1700 new cases of lung cancer every year<sup>1</sup>, and the American Lung Association estimates that 12% of all new lung cancer cases, or over 200 in Kansas each year, are caused by exposure to radon gas. With the cost of treating lung cancer currently estimated to be \$403,142 per year of life saved<sup>2</sup>, treatment for 200 radon-induced lung cancer patients could be costing over \$80 million per year of life saved in Kansas health care dollars. Compared to these costs, the cost of testing for radon and mitigation is minimal.

No area of Kansas is safe from the risks of indoor radon exposure. We have documented elevated levels of radon in all 105 Kansas counties. There is no way to predict if a specific location will have elevated radon levels or not. It is not uncommon for one house to have low levels while the house next door has high levels of radon. The only way to know is to test. In the Kansas Radon Program database of indoor radon measurements for the state, over 40% of the more than 35,000 Kansas test results are higher than the action level of four pico-Curies per liter (4.0 pCi/l). This is more than one out of every three. The map on page 3 illustrates the average radon levels documented in our database.

Passage of the Substitute for SB 577 will require a bold font paragraph to be added to all residential real estate contracts in Kansas. This paragraph will contain a warning about the risk of exposure to radon, information about the health effects of radon, and a recommendation by the Kansas Department of Health and Environment that all homebuyers should have an indoor radon test performed on the home. Under this bill, KDHE would also establish and administer a certification program for persons

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Voice 785-296-4359 Fax 785-296-0984

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performing radon testing and mitigation in Kansas, and promulgate rules and regulations for the implementation and administration of the certification program.

Including a warning about radon and a recommendation to perform a radon test on the real estate contract is an excellent way to ensure Kansas citizens are aware of the risk of exposure to this Class A human carcinogen in Kansas. This warning will assist homebuyers in making an informed decision about testing for radon. Having a radon test performed is a voluntary action the homebuyer can take during a real estate transaction at the same time as many other home inspections. It will assist the buyer in identifying a possible defect with the property he/she is considering purchasing. Radon tests can be performed either by a certified radon measurement contractor, or by using a do-it-yourself radon testing kit. Radon test kits are easily purchased at county extension offices in Kansas for a cost of five dollars, and at hardware and builder's supply stores, usually for less than twenty dollars cost.

Because radon gas is colorless, odorless, tasteless, and otherwise undetectable except with specialized equipment or test kits, it is a risk of which people may be unaware, ignore, or unfortunately disregard. Without a radon test, our citizens have no other way of knowing if they may be living in a home where they are breathing dangerous radon levels. To be accurate, a radon test must follow established testing standards and protocols. If elevated radon levels are measured, a radon mitigation system installed correctly by a trained and certified contractor ensures the system will function to reduce radon levels in the home. At this time, there are many individuals who conduct radon measurements or who may be mitigating homes in Kansas who are not properly trained, and who are not following established protocols and standards for radon testing or mitigation. Although we do not have data on the number of non-certified radon contractors operating in Kansas, information from our citizens indicates there are issues. We have investigated cases where incorrectly performed radon tests resulted in false negative results. We have also witnessed incorrectly installed mitigation systems. Incorrect installation can cause a more serious radon problem or other indoor air quality issues such as raising carbon monoxide levels. Under the Substitute for SB577, KDHE will not be regulating or enforcing the levels of radon, only the contractors to ensure they follow the current existing standards and protocols for testing and mitigation. It is the intent of the certification program to ensure that all contractors in Kansas have demonstrated the needed knowledge, expertise, and competency to measure and/or mitigate for radon gas, and will follow established standards of practice. This will increase consumer protection and confidence and is why nineteen other states have already passed similar legislation requiring certification of the radon contractors in their states.

In summary: Exposure to elevated levels of radon gas for an extended period causes lung cancer. Testing for radon and fixing elevated levels may prevent most of the future radon-induced lung cancer cases in our state. Testing is a voluntary action, which our citizens may or may not choose to take. This bill will ensure that they are informed of their options. The Kansas Department of Health and Environment believes the combined effort of providing information on the real estate contract, and certifying the radon contractors is the best way to prevent many of these cases of lung cancer in our citizens. KDHE worked closely with many other interested groups including the Kansas Association of Realtors in developing much of the language in this bill, and we strongly urge favorable consideration and support to Substitute for SB 577. I appreciate the opportunity to provide these comments and will be happy to answer questions.

References: <sup>1</sup>Kansas Cancer Registry (2004 data), <sup>2</sup>Medscape Medical News, October 25, 2007

# KDHE Proposed Amendment to Sub-SB577:

Page 3 line 16

Add

(f) The department shall not set standards under the radon certification program which are more stringent than either the federal or ASTM standards.

Page 3 line 16-29 - Add Maximum fees to New Section 5

New Sec. 5.

(a)

Subject to the limitations of this section, the secretary may impose and collect fees, in advance for:

Radon measurement technician, maximum application fee, new and annual renewal	\$200.00
Radon mitigation technician, maximum application fee, new and annual renewal	\$200.00
Radon measurement business, maximum application fee, new and annual renewal	\$500.00
Radon mitigation business, maximum application fee, new and annual renewal	\$500.00
Radon measurement laboratory, maximum application fee, new and annual renewal	\$500.00
Training course, maximum application fee	\$ 75.00
Returned check or insufficient check, maximum fee	\$ 50.00
Late application maximum fee, for each month or part thereof	\$ 50.00

Moneys derived from fees shall be expended solely for the administration and implementation of the radon certification law. The secretary shall remit all moneys received from such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the radiation control operations fee fund established by K.S.A. 48-1625, and amendments thereto.

House Comme	
Date: 3-	19-08
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25005 W. 129 Terr., Olathe, KS. 66061

March 18, 2008

Testimony on Sub-SB577 An Act enacting the radon awareness law and the radon certification law

Testimony by Gary Hodgden AAIR Professionals, Inc. (Midwest Radon) 913-780-2000 \* 25005 W. 129th Ter., Olathe, KS. 66061

Mr. Chairman and members of the Committee on Commerce and Labor:

I appreciate your time for reviewing my observations. I've been involved in radon testing/mitigation for over twenty years and my volunteer activities have placed me into thousands of hours in national meeting discussions over the years.

I have observed over the years that most professionals in home inspection, repair, home construction and real estate sales in Kansas are honest and forthright people.

I have also sadly observed that most are poorly versed in: 1) the risk of long-term exposure to ionizing radiation 2) procedures that create reproducible measurements, and 3) the fact that radon risk in Kansas rivals almost any area of our country.

### The inevitable result:

- 1) Inaccurate and misleading consultation on health risks. It is not uncommon for highly elevated radon concentrations to be described by hired consultants from real estate professionals or inspection professionals as, "No big deal. I wouldn't pay to fix it."
- 2) Neglected test procedures that often severely underestimate exposure to ionizing radiation. It is not uncommon that neither the test technician nor real estate professionals even know about the importance of EPA's "closed building protocol" to simulate conditions as occupied 70% of the year. It is therefore not uncommon that the test is, instead, a measurement of outside air.
- 3) Inappropriate consultation regarding test recommendations: It is not uncommon for paid consultants from the ranks of inspectors, builders or Realtors to inaccurately discourage testing because: "Our area as radon free"; "This Style of home could not have radon"; "The previous test indicated readings similar to outside air"; "I've been in the business for 25 years and never found a home with a problem".

These professionals are not very often bad people. They are simply ill-informed. Unfortunately, their actions are not only dangerous to the health of consumers but also to their own survival as professionals. Our lives are busy and the national noise of so many problems drown out messages like lung cancer from radon.

a division of AAIR Professionals, Inc.

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Regarding Science, risk and the cost to Kansas:

I have witnessed highly intelligent physicians and radiation physicists miss the magnitude of the radon issue. For people spending their days concerned about how much radiation might cause a death from short-term exposure situations, the typical exposure from radon seems inconsequential. Still, nobody argues over potential deaths from radon exposure anymore that they would argue that radiation exposure from the sun does not cause skin cancer. The only argument is to what degree of exposure should be set as a recommended limit. Unfortunately, it is like arguing over how many years of working in the sun we should set as a recommended limit for avoiding skin cancer. Only a few million case study examples could truly quantify trends in exposure intensity and time periods for solar radiation induced skin cancer. Without a few million case studies, all we really know is: 1) That nationally each year about 8,000 skin cancer deaths are expected to have been caused by solar radiation while about 21,000 are expected to result from radon induced lung cancer; 2) That expected deaths from radon each year are more than all other home related causes of death, combined; 3) That these numbers are 4-5 time higher than deaths expected from second hand smoke; and 4) that the yearly toll is virtually in a dead heat for competing with deaths from drunk driving.

In Kansas: The correlation to estimates from the National Academy of Sciences in relationship to the population in Kansas results in greater than 200 preventable lung cancer deaths per year in Kansas from radon. I have witnessed the national calculations for the cost to the common wealth for lives cut short in their last 15-20 years of productivity due to radon induced lung cancer. It is actually factored into federal budgets. Besides humanitarian concerns, it is factually a significant financial loss to Kansas.

Outreach in Kansas: I've seen at times improvement in the consulting practices of local inspectors and realtors due to state outreach efforts for education. However with a high turnover rate in these industries and a natural reticence to spend valuable time on "questionable" education, the progress takes one step forward and then drops two steps back.

Under all of these circumstances, I see no responsible course of action than to recommend you support the approval of Senate Bill 577.

Sincerely,

Gary Hodgden

Kansas citizen and small business owner

President: AAIR Professionals, Inc.

913-780-2000 800-364-7155

25005 W. 129th Terr. Olathe, KS. 66061

gary@aair.com



Date: March 19, 2008

Subject: SB 577 Fine Radon Awareness Legislation

Honorable Representatives of the Great State of Kansas,

I represent a group of licensed radon mitigators and testers in Kansas. I would like to first open citing our background of the mitigation efforts in Kansas. I have worked in the radon industry for two and a half years, a licensed environmental engineer in Kansas for 12 years, a7year decorated fire fighter/EMT, and have been before the Kansas Legislators recognized as one of the heroes of the September 2005 floods. As a licensed Civil Engineer, working full time, I can assure you my passion for my work in radon is not for the money. The real drive is more along the lines of my work as a volunteer fire fighter; to make a positive impact on this world and save lives. I know making a difference is what brought you as well to the noble calling of being a Kansas Representative. This fine legislation is just the right avenue to make just such a difference.

As we mitigators and testers work directly with the citizens we almost always find ourselves as educators on the subject. It is a fairly complex topic and the people of Kansas deserve a knowledgeable mitigator and/or tester working with them on this sensitive issue. We have spent hours talking to customers in tears about their fear of cancer giving them the real information and facts. This takes tact and knowledge of the subject. Many unlicensed contractors make their best efforts in mitigating homes only to place citizens at more risk. For instance, if a mitigation system is installed incorrectly without the proper training he/she might actually suck deadly carbon monoxide back into the home from the gas furnace and/or hot water heater chimney. We have many times come across homes that have been improperly tested under extreme weather conditions scaring the home buyers into believing they have a radon problem. However, after having a licensed professional test their home usin industry standards, they find their levels to be acceptable. While the person testing these homes did so with good intention, it does require a level of education to be conducted correctly. Home buyers and sellers need to make informed decisions with the facts before buying a home with their hard earned money.

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Conservatively 200 Kansans each year sadly have their lives cut short by radon gas infiltration in their homes. Think about all the things in life we fear that doesn't even approach that risk. We have established in many Kansas counties more than one in four will be tested above the EPA recommended 4.0pCi/l. Of the over 1,000,000 households in Kansas there would be something like 200,000 homes over that level. These homes have men, women, and children breathing unacceptable levels of lung damaging radiation each and every day. Levels much higher than workers at Wolf Creek are expected to tolerate.

## Local Observations:

- The standard professional radon test during a realty transaction is \$100
- \$1.00 to \$15.00 if done by the homeowner.
- Mitigation cost is \$750 to \$1700 but averages about \$1,100.
- Homes only feet apart can test minimal to extremely high.
- All homes from our experience can be mitigated.
- More radon awareness is need in Kansans.
- If you pass this legislation we can be certain lives will be saved.

In my short experience in the radon industry I have met all too many people dying from probable radon caused lung cancer as they have never smoked and homes tested high for radon. I mitigated Jaunita Donnelson's home for \$1,050 and spent hours talking and getting to know that incredibly nice lady. As I picked up my post mitigation test equipment and made some minor adjustments I can still picture her playing dolls with my one year old on her basement floor. I felt for Elane Ropp of Fort Scott as she was having a rough day from her treatments. She was wearing that stylish head scarf that cancer patients wear as we discussed the radon issues and the need to let more people know before it was too late. Several others that can't claim the innocents of never smoking but the radon levels likely exacerbated or accelerated the cancer. Being only one of many mitigators I know there are many other sad stories. A colleague of mine pained over a story recently about a rancher he met in Western Kansas that had never smoked and he tested over 60pCi/l in his beautiful home that he never knew about until it was too late. After meeting these people it is hard not to do everything we can to see that others don't have to go through this nightmare. I personally identify with the family members as I watched my mother slowly waste away and die from the scourge of cancer thus my passion over the subject.

We whole heartedly support SB 577 and the presented amendments. We commend your time and efforts along with those that have work so hard getting us to this landmark point. If you have any questions please don't hesitate to ask us in the radon industry so you too can make an informed decision.

Sincerely,
Roger J. Dahlby, P.E.
Licensed Professional,
Radon Mitigatior
Radon Testing Specialist
Volunteer Fire fighter/EMT/Swift Water Tech.
Environmental/Structural Engineer