

LEGISLATIVE BILL 130

Approved by the Governor May 08, 2019

Introduced by DeBoer, 10; Hansen, M., 26; Wayne, 13.

A BILL FOR AN ACT relating to building construction standards; to amend sections 71-6403, 71-6404, 71-6406, 76-3501, 76-3502, 76-3503, 76-3504, and 76-3505, Reissue Revised Statutes of Nebraska; to change provisions relating to the state building code; to provide radon resistant new construction standards; to provide, change, and eliminate definitions; to restate intent; to eliminate a task force; to provide reporting requirements for the Department of Health and Human Services; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-6403, Reissue Revised Statutes of Nebraska, is amended to read:

71-6403 (1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), chapter 13 of the 2009 edition, and all but such chapter of the 2012 edition, published by the International Code Council, except that (i) section 305.2.3 applies to a facility having twelve or fewer children and (ii) section 310.5.1 applies to a care facility for twelve or fewer persons;

(b) The International Residential Code (IRC), chapter 11 of the 2009 edition, and all but such chapter of the 2012 edition except section R313, published by the International Code Council; and

(c) The International Existing Building Code, 2012 edition, published by the International Code Council.

(2) The codes adopted by reference in subsection (1) of this section and the minimum standards for radon resistant new construction adopted under section 76-3504 shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

Sec. 2. Section 71-6404, Reissue Revised Statutes of Nebraska, is amended to read:

71-6404 (1) For purposes of the Building Construction Act:

(a) Component ~~, component~~ means a portion of the state building code created adopted by reference pursuant to section 71-6403; and -

(b) Radon resistant new construction has the same meaning as in section 76-3503.

(2) The state building code shall be the building and construction standard within the state and shall be applicable:

(a) To all buildings and structures owned by the state or any state agency; and

(b) In each county, city, or village which elects to adopt the state building code or any component or combination of components of the state building code.

Sec. 3. Section 71-6406, Reissue Revised Statutes of Nebraska, is amended to read:

71-6406 (1) Any county, city, or village may enact, administer, or enforce a local building or construction code if or as long as such county, city, or village:

(a) Adopts the state building code; or

(b) Adopts a building or construction code that conforms generally with the state building code.

(2) A local building or construction code shall be deemed to conform generally with the state building code if it:

(a) Adopts a special or differing building standard by amending, modifying, or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, establish best building or construction practices within the county, city, or village, or address special local conditions within the county, city, or village;

(b) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code;

(c) Adopts section 305 of the 2012 edition of the International Building Code without the exceptions described in subdivision (1)(a) of section 71-6403, chapter 13 of the 2012 edition of the International Building Code, chapter 11 of the 2012 edition of the International Residential Code, or section R313 of the 2012 edition of the International Residential Code;

(d) Adopts a plumbing code, an electrical code, a fire prevention code, or any other standard code as authorized under section 14-419, 15-905, 18-132, or 23-172; ~~or~~

(e) Adopts a lighting and thermal efficiency ordinance, resolution, code, or standard as authorized under section 81-1618; ~~or -~~

(f) Adopts minimum standards for radon resistant new construction which meet the minimum standards adopted under section 76-3504.

(3) A local building or construction code ~~which includes a prior edition of any component or combination of components of the state building code~~ shall not be deemed to conform generally with the state building code ~~if it: -~~

(a) Includes a prior edition of any component or combination of components of the state building code; or

(b) Does not include minimum standards for radon resistant new construction that meet the minimum standards adopted under section 76-3504.

(4) A county, city, or village shall not adopt or enforce a local building or construction code other than as provided by this section.

(5) A county, city, or village which adopts or enforces a local building or construction code under this section shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recently enacted state building code or a code that conforms generally with the state building code is adopted by the county, city, or village within two years after an update to the state building code.

(6) A county, city, or village may adopt amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code.

(7) A county, city, or village which adopts one or more standard codes as part of its local building or construction code under this section shall keep at least one copy of each adopted code, or portion thereof, for use and examination by the public in the office of the clerk of the county, city, or village prior to the adoption of the code and as long as such code is in effect.

(8) Notwithstanding the provisions of the Building Construction Act, a public building of any political subdivision shall be built in accordance with the applicable local building or construction code. Fees, if any, for services which monitor a builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the county, city, or village doing the monitoring.

Sec. 4. Section 76-3501, Reissue Revised Statutes of Nebraska, is amended to read:

76-3501 Sections 76-3501 to 76-3505 and sections 9 and 10 of this act shall be known and may be cited as the Radon Resistant New Construction Act.

Sec. 5. Section 76-3502, Reissue Revised Statutes of Nebraska, is amended to read:

76-3502 The Legislature finds that:

(1) Radon is a radioactive element that is part of the radioactive decay chain of naturally occurring uranium in soil;

(2) Radon is the leading cause of lung cancer among nonsmokers and is the number one risk in homes according to the Harvard Center for Risk Analysis at the Harvard T.H. Chan School of Public Health;

(3) The World Health Organization Handbook on Indoor Radon includes key messages which state:

(a) "There is no known threshold concentration below which radon exposure presents no risk."; and

(b) "The majority of radon-induced lung cancers are caused by low and moderate radon concentrations rather than by high radon concentrations, because in general less people are exposed to high indoor radon concentrations.";

(4) The Surgeon General of the United States urged Americans to test their homes to find out how much radon they might be breathing;

(5) The United States Environmental Protection Agency estimates that more than twenty thousand Americans die of radon-related lung cancer each year; ~~and~~

(6) The United States Environmental Protection Agency has identified radon levels in Nebraska as the third highest in the United States because of the high concentration of uranium in the soil; ~~and -~~

(7) In 2018, the Radon Resistant New Construction Task Force recommended minimum standards for radon resistant new construction to the Governor, the Health and Human Services Committee of the Legislature, and the Urban Affairs Committee of the Legislature.

Sec. 6. Section 76-3503, Reissue Revised Statutes of Nebraska, is amended to read:

76-3503 For purposes of the Radon Resistant New Construction Act:

(1) Active radon mitigation system means a family of radon mitigation systems involving mechanically driven soil depressurization, including subslab depressurization, drain tile depressurization, block wall depressurization, and submembrane depressurization. Active radon mitigation system is also known as active soil depressurization;

~~(2) Building code means an ordinance, resolution, or law that establishes standards applicable to new construction;~~

(2) ~~(3)~~ Building contractor means any individual, corporation, partnership, limited liability company, or other business entity that engages in new construction;

(3) ~~(4)~~ Department means the Department of Health and Human Services;

(4) ~~(5)~~ New construction means any original construction of a single-family home or a multifamily dwelling, including apartments, group homes, condominiums, and townhouses, or any original construction of a building used for commercial, industrial, educational, or medical purposes. New construction does not include additions to existing structures or remodeling of existing structures;

~~(5) (6) Passive radon mitigation system new construction pipe means a pipe installed in new construction that relies solely on the convective flow of air upward for soil gas depressurization and may consist of multiple pipes routed through conditioned space from below the foundation to above the roof; and~~

~~(6) (7) Radon mitigation specialist means an individual who is licensed by the department as a radon mitigation specialist in accordance with the Radiation Control Act; and -~~

~~(7) Radon resistant new construction means construction that utilizes design elements and construction techniques that passively resist radon entry and prepare a building for an active postconstruction mitigation system.~~

Sec. 7. Section 76-3504, Reissue Revised Statutes of Nebraska, is amended to read:

76-3504 Except as provided in section 76-3505, new construction built after the effective date of this act in the State of Nebraska that is intended to be regularly occupied by people shall be built using radon resistant new construction. Such construction shall meet the following minimum standards:

(1) Sumps:

(a) A sump pit open to soil or serving as the termination point for subslab or exterior drain tile loops shall be covered with a gasketed or otherwise sealed lid;

(b) A sump used as the suction point in a subslab depressurization system shall have a lid designed to accommodate the vent pipe; and

(c) A sump used as a floor drain shall have a lid equipped with a trapped inlet;

(2) A passive subslab depressurization system shall be installed during construction in basement or slab-on-grade buildings, including the following components:

(a) Vent pipe:

(i)(A) A minimum three-inch diameter acrylonitrile butadiene styrene (ABS), polyvinyl chloride (PVC), or equivalent gas-tight pipe shall be embedded vertically into the subslab permeable material before the slab is cast. A "T" fitting or equivalent method shall be used to ensure that the pipe opening remains within the subslab permeable material; or

(B) A minimum three-inch diameter ABS, PVC, or equivalent gas-tight pipe shall be inserted directly into an interior perimeter drain tile loop or through a sealed sump cover where the sump is exposed to the subslab or connected to it through a drainage system;

(ii) The pipe shall be extended up through the building floors and terminate at least twelve inches above the surface of the roof in a location at least ten feet away from any window or other opening into the conditioned spaces of the building that is less than two feet below the exhaust point and ten feet from any window or other opening in adjoining or adjacent buildings; and

(iii) In buildings where interior footings or other barriers separate the subslab gas-permeable material, each area shall be fitted with an individual vent pipe. Vent pipes shall connect to a single vent that terminates above the roof or each individual vent pipe shall terminate separately above the roof. All exposed and visible interior radon vent pipes shall be identified with at least one label on each floor and in accessible attics. Such label shall read: Radon Reduction System; and

(3) Power source: In order to provide for future installation of an active radon mitigation system, an electrical circuit terminated in an approved box shall be installed during construction in the attic or other anticipated location of vent pipe fans.

~~(1) The Radon Resistant New Construction Task Force is created. The task force shall consist of the chief medical officer of the Division of Public Health of the Department of Health and Human Services as designated in section 81-3115 or his or her designee, who shall serve as the chairperson of the task force, and the following additional members to be appointed by the Governor:~~

~~(a) Three representatives of home builders' associations in Nebraska, each from a different congressional district;~~

~~(b) A representative of a home inspectors' association in Nebraska;~~

~~(c) Two representatives of commercial construction associations, one of whom must have experience related to large-scale projects and one of whom must have experience related to medium-scale to small-scale projects;~~

~~(d) A representative of a Nebraska realtors' organization;~~

~~(e) A representative of a respiratory disease organization;~~

~~(f) A representative of a cancer research and prevention organization;~~

~~(g) A representative of the League of Nebraska Municipalities;~~

~~(h) Three community public health representatives, each from a different congressional district;~~

~~(i) A professional engineer as defined in section 81-3422;~~

~~(j) An architect as defined in section 81-3404; and~~

~~(k) A representative with expertise in residential or commercial building codes.~~

~~(2) The task force shall meet at the call of the chairperson. The appointed members of the task force shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide staff and support for the operation of the task force.~~

~~(3) The task force shall develop minimum standards for radon resistant new construction and shall recommend such minimum standards to the Governor, to the Health and Human Services Committee of the Legislature, and to the Urban~~

Affairs Committee of the Legislature. In developing such minimum standards, the task force shall:

~~(a) Design the minimum standards so that they may be enforced by a county, city, or village as part of its local building code;~~

~~(b) Consider Appendix F of the International Residential Code for One and Two-Family Dwellings, 2012 edition, published by the International Code Council; and~~

~~(c) Consider including the following provisions in such minimum standards:~~

~~(i) A requirement that the installation of an active radon mitigation system only be performed by a building contractor or his or her subcontractors or by a radon mitigation specialist;~~

~~(ii) A requirement that the installation of radon resistant new construction only be performed by a building contractor or his or her subcontractors or by a radon mitigation specialist; and~~

~~(iii) A requirement that only a building contractor or his or her subcontractors or a radon mitigation specialist be allowed to install a radon vent fan or upgrade a passive new construction pipe to an active radon mitigation system.~~

~~(4) The task force shall provide its recommendations by April 15, 2018. The task force and this section terminate on May 1, 2018.~~

Sec. 8. Section 76-3505, Reissue Revised Statutes of Nebraska, is amended to read:

76-3505 New construction after the effective date of this act shall not be required to use radon resistant new construction if (1) the construction project utilizes the design of an architect or professional engineer licensed under the Engineers and Architects Regulation Act, (2) the construction project is located in a county in which the average radon concentration is less than two and seven-tenths picocuries per liter of air as determined by the department pursuant to section 10 of this act, or (3) other than for any residential dwelling unit, a local building official makes a determination, after a review of relevant guidelines for the intended use of the structure and property conditions, that radon resistant new construction is not necessary. It is the intent of the Legislature that the recommendations provided by the Radon Resistant New Construction Task Force under section 76-3504 be used by the Legislature during the 2019 legislative session to establish, in statute, minimum standards for radon resistant new construction.

Sec. 9. A building contractor or a subcontractor of a building contractor may convert a passive radon mitigation system to an active radon mitigation system in accordance with rules and regulations adopted and promulgated by the department under the Radiation Control Act for radon mitigation, but the contractor or subcontractor is not required to be a radon mitigation specialist to convert such system. A radon mitigation specialist shall conduct any postinstallation testing of such system.

Sec. 10. On or before January 1, 2020, and on or before January 1 of each year thereafter, the department shall compile the results of the radon measurements performed in the past five years that were reported to the department pursuant to the rules and regulations adopted and promulgated by the department regarding the control of radiation and report such compilation electronically to the Clerk of the Legislature. Such report shall determine the average radon concentration in Nebraska by county and identify each county in which such average concentration exceeds two and seven-tenths picocuries per liter of air.

Sec. 11. Original sections 71-6403, 71-6404, 71-6406, 76-3501, 76-3502, 76-3503, 76-3504, and 76-3505, Reissue Revised Statutes of Nebraska, are repealed.