

# URBAN AFFAIRS COMMITTEE

## NEBRASKA LEGISLATURE

LR 123: An interim study to review the occupational regulations  
for radon measurement specialists and radon mitigation  
specialists

Report as required pursuant to the Occupational Board Reform  
Act (OBRA)

One Hundred Seventh Legislature  
First Session

### Committee Members

Senator Justin Wayne, Chairperson, District 13  
Senator Megan Hunt, Vice-Chairperson, District 8  
Senator John Arch, District 14  
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Senator Tom Briese, District 41  
Senator Matt Hansen, District 26  
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## Introduction

In 2018, the Legislature passed the Occupational Board Reform Act (OBRA)<sup>1</sup>, which became operative on July 1, 2019. The purpose of OBRA was to establish a process for ongoing review and analysis of occupational regulations in Nebraska, with the primary responsibility for such reviews assigned to the 14 standing committees of the Legislature.

Under OBRA, an “occupational regulation” is defined as a statute, rule, regulation, practice, policy, or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation. Beginning in 2019, each standing committee of the Legislature is required to annually review and analyze approximately twenty percent (20%) of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year. Each report shall include the committee’s recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

Based off an initial review of occupational regulations by the Executive Board of the Legislature in 2019, there were three occupational regulations identified as under the jurisdiction of the Urban Affairs Committee<sup>2</sup>. A fourth occupational regulation<sup>3</sup> was added under the committee’s jurisdiction in 2021 with the passage of LB 423.

The committee selected Radon Specialists & Technicians for review in 2021. In order to facilitate the occupational regulation review, the committee introduced LR 123, an interim study to review the occupational regulations for radon measurement specialists and radon mitigation specialists<sup>4</sup>.

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey responses for each agency are published on the Legislature’s website.

The Department of Health and Human Services is the agency that oversees the regulation of Radon Measurement Specialists and Radon Mitigation Specialists. The survey response from the Department can be found at:

[https://www.nebraskalegislature.gov/reports/committeesurvey\\_view.php](https://www.nebraskalegislature.gov/reports/committeesurvey_view.php)

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<sup>1</sup> Nebraska Revised Statute §84-933 to §84-948

<sup>2</sup> Fire Alarm Inspector, Master Plumber, and Radon Specialist & Technician

<sup>3</sup> Home Inspector

<sup>4</sup> Because Nebraska no longer licenses Radon Technicians, this report will simply refer to the two licenses currently required – Radon Measurement Specialists and Radon Mitigation Specialists.

## Background & Legislative History

Nebraska has required the licensure of individuals and businesses involved in the measurement and mitigation of radon since 1988. The Department of Health<sup>5</sup> was initially authorized to promulgate rules and regulations for the issuance, amendment, suspension, and revocation of general and specific licenses for radioactive material not under the authority of the federal Nuclear Regulatory Commission in 1987<sup>6</sup>. Specific authorization for the Department to require registration or licensure of persons providing measurement and mitigation services of radon or its decay products was added in 1990<sup>7</sup>.

The licensure provisions for Radon Measurement Specialists and Radon Mitigation Specialists are contained in the Radiation Control Act<sup>8</sup>, which also contains regulations related to radioactive materials, x-rays, medical radiography, and nuclear power plants. While the Act as a whole has been amended frequently, the licensure provisions for Radon Measurement Specialists and Radon Mitigation Specialists have only been substantively amended three times: 1) in 1993<sup>9</sup>, intent language on protecting Nebraskans from the dangers of radon and language requiring the Department to promulgate rules and regulations establishing requirements for Radon Measurement Specialists, Radon Measurement Technicians, Radon Mitigation Specialists, and Radon Mitigation Technicians was added to the Act; 2) in 2007<sup>10</sup>, licensure provisions for Radon Measurement Specialists, Radon Measurement Technicians, Radon Mitigation Specialists, and Radon Mitigation Technicians were aligned with the requirements of the Uniform Credentialing Act<sup>11</sup> and 3) in 2008<sup>12</sup>, licenses for Radon Measurement Technicians and Radon Mitigation Technicians were eliminated, as the requirements for specialists and technicians had become indistinguishable.

Under Nebraska Revised Statute §71-3507, the Department of Health & Human Services shall require licensure of persons providing measurement and mitigation services of radon or its decay products in order to protect the occupational and public health and safety and the environment. The Department shall adopt and promulgate rules and

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<sup>5</sup> Prior to 2007, five separate state agencies – the Department of Aging, the Department of Corrections, the Department of Health, the Department of Public Institutions, and the Department of Social Services – oversaw much of the state’s health & human services functions. The departments of Aging, Health, Public Institutions, and Social Services, along with portions of the Department of Corrections, were merged into the combined Department of Health & Human Services with the passage of LB 296 (2007).

<sup>6</sup> LB 390 (1987)

<sup>7</sup> LB 1064 (1990)

<sup>8</sup> Nebraska Revised Statute §71-3501 to §71-3520

<sup>9</sup> LB 536 (1993)

<sup>10</sup> LB 463 (2007)

<sup>11</sup> Nebraska Revised Statute §38-101 to §38-1,146

<sup>12</sup> LB 928 (2008)

regulations establishing education, experience, training, examination, and continuing competency requirements for Radon Measurement Specialists and Radon Mitigation Specialists, and these rules and regulations can be found in the Nebraska Administrative Code Title 180, Chapter 11.

Pursuant to Nebraska Revised Statute §71-3508.03, the Department of Health & Human Services shall establish and collect fees for licenses for individuals engaged in radon detection, measurement, and mitigation as provided in the Uniform Credentialing Act, and these fees can also be found in the Nebraska Administrative Code Title 180, Chapter 11.

The Department of Health & Human Services, which is a code agency, is solely responsible for the licensing of Radon Measurement Specialists and Radon Mitigation Specialists, and there is not a separate occupational board responsible for the enforcement of these occupational regulations.

## Committee Findings

Pursuant to Nebraska Revised Statute §84-948, each report issued by a standing committee of the Legislature must contain the following information (*responses in italics*):

- 1) The title of the regulated occupation and the name of the occupational board responsible for the enforcement of the occupational regulations;

*Title of Regulated Occupation: Radon Measurement Specialists/Radon Mitigation Specialists*

*Name of Occupational Board: There is no separate occupational board for the regulation of Radon Measurement Specialists and Radon Mitigation Specialists. The Department of Health & Human Services – Division of Public Health is responsible for the licensing of Radon Measurement Specialists and Radon Mitigation Specialists.*

- 2) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

*Radiation Control Act, Nebraska Revised Statute §71-3501 to §71-3520*

*Rules and regulations regarding the regulation of Radon Measurement Specialists and Radon Mitigation Specialists can be found in the Nebraska Administrative Code Title 180, Chapter 11.*

- 3) The number of members of the occupational board and how the members are appointed;

*Not applicable*

- 4) The qualifications for membership on the occupational board;

*Not applicable*

- 5) The number of times the occupational board is required to meet during the year and the number of times it actually met;

*Not applicable*

- 6) Annual budget information for the occupational board for the five most recently completed fiscal years;

*The Department of Health & Human Services employs 3.25 support staff (2 separate FTE, 1.25 shared FTE) to oversee the licensing of Radon Measurement Specialists and Radon Mitigation Specialists.*

*The annual budget for the licensing of Radon Measurement Specialists and Radon Mitigation Specialists, which is funded using cash funds and grant funds from the U.S. Environmental Protection Agency (EPA), is as follows:*

*Fiscal Year 2020-2021 Budget: \$316,475*

*Fiscal Year 2019-2020 Budget: \$342,303*

*Fiscal Year 2018-2019 Budget: \$380,376*

*Fiscal Year 2017-2018 Budget: \$298,391*

*Fiscal Year 2016-2017 Budget: \$304,189*

- 7) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

*Between January 1, 2016 and December 31, 2020, there were a total of 761 licenses issued by the Department of Health & Human Services. This number includes the following number of licenses by type as follows:*

*160 New Radon Measurement Specialist Licenses*

*387 Radon Measurement Specialist License Renewals*

*64 New Radon Mitigation Specialist Licenses*

*150 Mitigation Specialist License Renewals*

*Between January 1, 2016 and December 31, 2020, two licenses were revoked by the Department based on health and safety concerns. No licenses were denied during that same time period, as the Department works with applicants to fix deficiencies and to achieve licensure.*

- 8) A review of the basic assumptions underlying the creation of the occupational regulations;

*Radon is a cancer-causing colorless, odorless gas that is the leading cause of lung cancer among non-smokers. Professionals that work in the field of radon*

*measurement and radon mitigation are entrusted with the health and safety of Nebraska residents.*

*Nebraska is known as one of the leaders in radon regulation, as the state's program has existed since 1988. The state has been on the forefront of radon regulation largely out of necessity, as Nebraska has the third highest rate of radon in the country.*

- 9) A statement from the occupational board on the effectiveness of the occupational regulations; and

*Title 180 NAC 11 (Requirements for Radon and Radon Progeny Measurement and Mitigation Services) appropriately fulfills the intent of the Nebraska Radiation Control Act when it authorizes the promulgation of regulations for the licensure of persons providing services for the measurement and mitigation of radon. We believe that the regulations overseen by the Nebraska Radon Program have a demonstrated history of being effective.*

*Our program maintains a database with information about all of the measurements and mitigations conducted in Nebraska. From the program's inception to September 28, 2021, there have been 283,615 measurements conducted. Our regulations ensure that these measurements readings can be relied upon. Trusting these results allows residents to make an informed decision when evaluating their own risk and mitigating it.*

*From the program's inception to September 28, 2021, there have been 57,472 mitigation systems installed. Our regulations ensure that these systems have been installed by qualified professionals that have been held to appropriate standards. Because individual radon measurement specialists and individual radon mitigation specialists are licensed, members of the public can trust them to invite them into their homes to appropriately perform this important work. Systems that have been correctly installed work to reduce radon exposure for many years to come and can save lives.*

*Unlicensed and unprofessional activity is addressed by both the Radiation Control Act and 180 NAC 11 Requirements for Radon and Radon Progeny Measurement and Mitigation Services. Regulatory oversight ensures that Nebraskans receive accurate and reliable radon data upon which to base radon mitigation decisions. Prohibiting inappropriate mitigation activity prevents the installation of systems that could cause additional and immediate harm to the occupants of the homes where they are installed.*



*States Congress issued a report to the EPA as part of its budget-writing process encouraging states to require certification of radon-related measurement and mitigation services to meet increased demand for radon services as a result of the National Radon Action Plan.*

In addition, each report issued by a standing committee of the Legislature must analyze whether the occupational regulations meet the policy goals established under OBRA and consider the following recommended courses of action for meeting such policy goals (*responses in italics*):

- 1) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

*Not applicable*

- 2) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

*As noted by the Department of Health & Human Services, the Nebraska Radon Program maintains a database with information about all radon measurements and mitigations conducted since the program's inception in 1988. This data allows Nebraskans to make informed decisions about when to conduct periodic inspections based off the historical radon levels in their area.*

- 3) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

*Not applicable*

- 4) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

*Not applicable*

- 5) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the provider's knowledge, the likely recommendation will be to enact government certification; and

*Not applicable*

- 6) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

*Not applicable*

## Conclusion & Recommendations

Among the policy goals established under OBRA<sup>13</sup> is the goal to use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest. In the case of Radon Measurement Specialists, the occupational regulations are designed to ensure the accuracy of radon measurements, which allows Nebraskans to make informed decisions about their own risk from radon exposure and potentially necessary actions to mitigate radon levels. In the case of Radon Mitigation Specialists, the occupational regulations are designed to ensure that radon mitigation systems are correctly installed and reduce radon exposure in order to save lives.

Radon is a cancer-causing colorless, odorless gas that is the leading cause of lung cancer among non-smokers. Since 1988, Nebraska has been known as one of the leaders in radon regulation, in no small part because Nebraska has the third highest rate of radon in the United States. According to the Department of Health & Human Services, the licensure of radon professionals is necessary to offer assurances to the public that personnel engaged in radon measurement and mitigation have been trained to meet certain minimal professional qualifications and that they have maintained continuing education. A majority of U.S. states currently require either licensure or certification of radon professionals, and in fact, national trends appear to be going in the direction of more – not less – regulation of radon professionals.

The Urban Affairs Committee finds that the current occupational regulations for Radon Measurement Specialists and Radon Mitigation Specialists appear to be consistent with the policy goals established under OBRA, and recommends that the licensing of Radon Measurement Specialists and Radon Mitigation Specialists by the Department of Health & Human Services – Division of Public Health be continued with no modifications.

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<sup>13</sup> Nebraska Revised Statute §84-946